No. 11341

United States
Circuit Court of Appeals
For the Ninth Circuit.

TOM RUSTAD, Owner and Claimant of the Oil Screw "MELODY," and FIDELITY & DEPOSIT COMPANY OF MARYLAND, a corporation,

Appellants.

vs.

CHARLES WUORI, JOHN KURTTI, CYRUS C. CHRISTENSEN and ARMAND SYVANEN,

Appellees.

Apostles on Appeal

Upon Appeal from the District Court of the United States for the District of Oregon

FILED

JUL 5 1946

PAUL P. O'BRIEN,
CLERK

Rotary Colorprint, 661 Howard Street, San Francisco

No. 11341

United States
Circuit Court of Appeals
For the Ninth Circuit.

TOM RUSTAD, Owner and Claimant of the Oil Screw "MELODY," and FIDELITY & DEPOSIT COMPANY OF MARYLAND, a corporation,

Appellants,

vs.

CHARLES WUORI, JOHN KURTTI, CYRUS C. CHRISTENSEN and ARMAND SYVANEN,

Appellees.

Apostles on Appeal

Upon Appeal from the District Court of the United States for the District of Oregon

Rotary Colorprint, 661 Howard Street, San Francisco

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

Answer to Libel 14

Appeal:

Bond for Costs on 35

Bond Staying Execution 38

Citation on 34

Clerk's Certificate 45

Order Allowing 31

Order That Original Exhibits Need Not Be Printed as Part of Apostles on..... 337

Petition for 30

Statement of Points 336

Assignments of Error 32

Bond on Appeal Staying Execution..... 38

Bond for Costs on Appeal 35

Citation on Appeal 34

Claim of Owner 13

Claimant's Stipulation to Abide by and Pay the Decree 13

Clerk's Certificate 45

Docket Entries 42

INDEX PAGE

Findings of Fact and Conclusions of Law and Final Decree 20

Libel in Rem 2

Names and Addresses of Attorneys..... 1

Order Allowing Appeal 31

Order Staying Execution 37

Order to Send Original Exhibits to Appellate Court 40

Order That Original Exhibits Need Not Be Printed as Part of Apostles on Appeal..... 337

Petition for Appeal 30

Praecipe 40

Statement of Points 336

Stipulation (DC) 44

Transcript of Proceedings 47

Exhibit for Libelants:
4—Official Tide Table for Astoria and Vicinity 230

Exhibit for Respondents:
3—Agreement between The Chambers Boat Co. and Thomas B. Rustad..... 202

Witnesses for Libelants:
Christensen, Cyrus C.
—direct 152, 181
—cross 166, 185

INDEX PAGE

Witnesses for Libelants—(Continued)

Kurtti, John
—direct 138

Syvanen, Armand
—direct 125
—cross 134

Wuori, Charles
—direct 50, 195
—cross 105, 199
—redirect 117
—recross 123

Witnesses for Respondents:

Gaither, William
—direct 319
—cross 329
—redirect 332
—recross 332

Jensen, Arloy F.
—direct 256
—cross 273
—redirect 283
—recross 283

Rustad, Thomas
—direct 200, 313
—cross 219, 315
—redirect 240, 317
—recross 248, 318

INDEX PAGE

Witnesses for Respondents—(Continued)

Shaw, Donald William
—direct 284
—cross 294
—redirect 301
—recross 308

Webb, Kenneth Albert
—direct 168
—cross 171, 187

NAMES AND ADDRESSES OF ATTORNEYS OF RECORD

WOOD, MATTHIESSEN & WOOD,
ERSKINE WOOD and
LOFTON TATUM,
Yeon Building, Portland, Oregon
for Appellants.

A. C. FULTON,
Astoria, Oregon, and
JAY BOWERMAN,
Yeon Building, Portland, Oregon,
for Appellees.

In the District Court of the United States
for the District of Oregon.

Civil No. 2868—In Admiralty

CHARLES WUORI, JOHN KURTTI, CYRUS CHRISTENSEN, and ARMAND SYVANEN,
Libelants,

vs.

Oil Screw "MELODY," and TOM RUSTAD, Owner,
Respondents.

LIBEL IN REM

To the Honorable James Alger Fee and Claude McColloch, Judges of the above entitled Court:

The libelant Charles Wuori, the owner and master of the Oil Screw "Stampede II," and the crew of such vessel, to-wit, John Kurtti, Cyrus C. Christensen, and Armand Syvanen, seamen and cook respectively, bring this Libel against the Oil Screw "Melody," now lying in the Port of Astoria, in the District of Oregon, and Tom Rustad, her owner, and against all persons intervening for their interest therein in a cause of salvage, civil and maritime, and libelants allege as follows:

First: That on or about the 22nd day of July, A. D., 1945, the Oil Screw "Melody," her home port being Petersburg, Alaska, whereof Tom Rustad was then and still is the owner and master, and having a crew of four (4) men besides the

master, cleared the Port of Astoria, in the District of Oregon, on a tuna fishing venture or voyage in the waters of the Pacific Ocean. [1*]

Second: That on or about the hour of 2:30 o'clock P. M. on the 24th day of July, A. D. 1945, in the waters of the Pacific Ocean, at a point approximately nine (9) miles North of the Columbia River and about nine (9) miles West or offshore from the Washington coast, the Oil Screw "Melody" was sighted by the libelants. That no one was aboard, nor was any vessel or party standing by for the purpose of rendering any assistance to the derelict vessel "Melody." The crew of said vessel had abandoned said vessel and said vessel was then and there a derelict. That at such time and place, the said Oil Screw "Melody" was entirely foundered, the only exposed parts thereof being a small section of a corner of the top section of her pilot house, a part of her mast, one-fourth of the forward bait tank and one-third of the aft bait tank. That her bulwark was above water for approximately a lineal distance of six feet, the highest portion above water being about one foot, said section of the bulwark referred to being the turn of the port stern of said vessel. The deck of said vessel at the point just described was above water for an area of approximately two square feet, said vessel having a heavy list to starboard.

That said Oil Screw "Melody," as libelants are advised and therefore allege the fact to be, had been

* Page numbering appearing at foot of page of original certified Transcript of Record.

for approximately two days engaged in fishing for tuna fish, and had on board approximately four (4) tons of ice for the purpose of preserving said catch, and at the time of her foundering had approximately five (5) tons of tuna fish, of the approximate value of $2,000.00.

That there were numerous and sundry lines and nets adrift attached to said vessel "Melody," thereby presenting the hazard of fouling the wheel of any vessel attempting to salvage said vessel, her paraphernalia, equipment and cargo.

That at such time a light Southwest wind was prevailing and the sea was light moderate, the weather clear, and the tide [2] was approximately at one-half ebb.

That said Oil Screw "Melody," her equipment, paraphernalia, fishing gear, and cargo of tuna fish, was, immediately prior to her foundering, of the approximate value of $39,000.00, being a new vessel, of the approximate length of 50 feet, built of wood. Said vessel was completed and launched in the year 1945.

Third: That at such time, the libelant Charles Wuori counseled with the members of the crew of the Oil Screw "Stampede II" concerning the possibility and hazards of salvaging said vessel "Melody." That by agreement between said master and the crew, libelant Armand Syvanen, at risk to his life and person, proceeded to board said derelict "Melody," at about the hour of 2:30 o'clock p.m., on said day, and made fast a tow line from the

"Stampede II" to the rudder stock of said vessel "Melody," it being the only available place to make fast a tow line. That after said tow line was made fast as aforesaid, the United States Coast Guard crash boat arrived with the abandoning crew of the vessel "Melody" on board, which said crew had been rescued from a life raft in the waters of the Pacific Ocean some two or three miles distant from the point where the derelict "Melody" was situated. That said crew had not theretofore been seen by any of the libelants. That none of the said crew went aboard the derelict "Melody" or the vessel "Stampede II," or made any offer of any assistance whatever in rendering salvage assistance to the derelict "Melody," but on the contrary, remained aboard the United States Coast Guard crash boat, and at about 3:30 o'clock P.M. proceeded to shore and absented themselves during the entire salvage operations and offered no assistance whatever. Thereupon, at about the hour of 4:00 o'clock P.M. on said day, the said master and crew of the vessel "Stampede II" proceeded with the derelict vessel "Melody" in tow on a course towards Whistle Buoy F.L.R. (2), off the mouth of the Columbia River, so as to be able to tow said derelict "Melody" [3] on a proper course into the Columbia River and a safe haven therein. That upon getting said tow under way, the said derelict "Melody" rode upon a more upright position, although still low at the bow. That the undertaking and proceeding with said tow was at considerable risk to the lives and persons of libelants and risk to the vessel

"Stampede II," this being especially true when entering the tidal currents and sets of the Columbia River.

That said derelict "Melody" at the time the libelants took her under tow had a minimum of buoyancy. In this respect, libelants believe and therefore allege the truth to be that such vessel was kept afloat by the ice in her hold, air pockets within her hull, and the fuel oil in her tanks, and upon the melting of said ice and the escaping of the air from said pockets, and the loss of said oil from her fuel tanks, and the replacement thereof with water, said vessel would sink and become a total loss. So at all times, there was imminent danger that said derelict might sink at any moment, and especially so if not kept under way.

There was present the hazard, upon entering into the tidal and current sets of the Columbia River, of the sinking of said derelict "Melody" as aforesaid and the fouling of the wheel of the vessel "Stampede II" in a manner that it could not be timely removed, resulting in the possible loss of the vessel "Stampede II," her equipment, paraphernalia, and fishing gear, on account of the actions of the current ever present at the mouth of the Columbia River, carrying said derelict and the vessel "Stampede II" into, over and upon Peacock Spit, or other equally dangerous shoal, situated at or adjacent to the mouth and bar of the Columbia River.

Fourth: That at the times herein mentioned,

said Oil Screw "Stampede II," her equipment, paraphernalia, and fishing [4] gear, was of the fair and reasonable value of $35,000.00. That at the time the said derelict "Melody" was sighted, the said vessel "Stampede II" was headed for the bottom fishing grounds to engage in a drag fishing venture, and had five (5) tons of ice, of the value of $25.00, on board, sufficient for a cruise of several days. That said vessel "Stampede II" is a heavy duty drag and tuna fishing vessel, of heavy construction, and powered with a 100 horse power "Caterpillar" Diesel engine, having a length of 45.45 feet and breadth of 14.1 feet, and a depth of 6.65 feet.

Fifth: That about the hour of 3:00 o'clock P.M., the master of said vessel "Stampede II" spoke by radio telephone to the United States Coast Guard, and advised them of the facts, and requested the said Coast Guard to make immediate search for the crew of the derelict "Melody," as well as to send assistance to the "Stampede II" and her crew for the purpose of attempting the salvage of the derelict "Melody." That in response thereto, the United States Coast Guard sent its oil screw life boat "Triumph," a vessel of the approximate length of 52 feet, beam 13 feet, and depth 6½ feet, and powered with 160 horse power Superior Diesel engine, and two gas screw life saving surf boats, each of the approximate length of 36 feet, beam 11 feet, draft 4 feet, and each powered with 100 horse power Sterling gas engine. That the "Triumph" arrived at the tow or salvage operations

at 5:50 o'clock P.M., and one life saving surf boat arrived approximately fifteen minutes earlier, and each of said vessels, at the request of libelant Charles Wuori, made fast a tow line to the derelict, and said two vessels, together with the vessel "Stampede II," proceeded with the tow, and upon arriving at a point on the main channel range of the Columbia River, approximately abreast of the West end of both the North and South Jetties of the Columbia River, at about the hour of 11:15 or 11:30 o'clock P.M. [5] the wheel of the vessel "Stampede II" became fouled with the tow line of the "Triumph." That the "Stampede II" released the tow temporarily to free her wheel, which was done sufficiently to permit her to continue the tow, and she was fully able and seaworthy and of sufficient power to continue the tow but, as a matter of supreme precaution and good seamanship, under the prevailing circumstances, the said vessel "Stampede II" at the request of her master, went under partial tow of one of the surf life saving boats above mentioned, and they stood by until the derelict "Melody" was successfully navigated over and across the Columbia River bar and well inside of the Columbia River. That said vessel "Stampede II," its owner and crew, were ready and able and it was their intention to resume the tow, if it became necessary, and to render any and all necessary assistance or services to the derelict "Melody" that might have been necessary to assure her safety. That said tow was completed at approximately 1:30 o'clock A.M. on July 25, 1945, when said

derelict "Melody" was beached on a level, firm, sandy beach near the United States Coast Guard Station at Hammond, Oregon, at approximately high tide. That approximately at 7:00 o'clock A.M., on July 25, 1945, the tide had receded sufficiently to start work on preserving the engine, equipment, paraphernalia and cargo of said vessel "Melody" from further damage on account of the sea waters. Thereupon, the Coast Guard, at the request of libelants, and in company with them, proceeded to remove the sea water from the hull and bilge of said vessel "Melody," which required approximately four hours' labor.

That immediately upon the vessel "Melody" becoming afloat, she was, at the request of said Charles Wuori, the master and owner of the vessel "Stampede II," towed by the United States Coast Guard to the Port of Astoria, where the cargo of tuna fish of such vessel could be and was unloaded and saved, which libelants [6] allege was the proper procedure to adopt to save such cargo under the circumstances above related. That such cargo of tuna fish was disposed of in the market in good merchantable condition, for the sum of approximately $2,000.00, the exact amount being unknown to libelants.

Sixth: That the value of the vessel "Melody," upon arriving at the termination of the tow and the sea water removed from her hull and bilge, together with her tackle, equipment, paraphernalia and fishing gear, was approximately $34,000.00.

Seventh: That at the time of the fouling of the wheel of the vessel "Stampede II" as above alleged, it was necessary for the "Stampede II" to release 100 fathoms of its tow line in order to free her wheel. This was lost to the "Stampede II," to the damage of the owner in the sum of $300.00, the fair and reasonable value thereof.

Eighth: That by virtue of the work as herein alleged as performed by the libelants, and the time required to secure additional cable to supplant the one lost as above mentioned, and to make minor repairs on such vessel on account of said salvage operations as above alleged, libelants were precluded from five days' time bottom fishing, and had said vessel engaged in such bottom fishing operations, it would have captured from fifteen (15) to twenty (20) tons of bottom fish, of the value of $2,000.00 to $3,000.00, thus sustaining a loss on account of such delays of the sum of $2,000.00 to $3,000.00. [7]

Ninth: That but for the assistance so rendered by the libelants, the said vessel "Melody," her equipment, tackle, paraphernalia, fishing gear, and cargo pending, would most certainly have been entirely and wholly lost, for said vessel "Melody" would not much longer have remained afloat but would have sunk in the waters of the Pacific Ocean or the Columbia River, and lost beyond recovery.

Tenth: That the said libelants, by reason of the perils necessarily incurred, and the great importance and nature of the services rendered by them

in saving said vessel "Melody" and her cargo, reasonably deserve to have and, therefore, claim a commensurate reward for salvage of the said vessel "Melody."

Eleventh: That all and singular the premises are true, and within admiralty and maritime jurisdiction of the United States and this Honorable Court. [8]

Therefore, libelants pray that process, in due form of law, according to the course ef the Courts of Admiralty and this Honorable Court, in a cause of admiralty and maritime jurisdiction, may issue against the Oil Screw "Melody," her tackle, equipment, paraphernalia, and fishing gear, and cargo, and that all persons having, or pretending to have, any right, title, or interest in the said vessel, and the cargo, may be cited to appear and answer all and singular the matters aforesaid; and that this Honorable Court decree such a sum, or proportion, of the value of the said vessel "Melody," her tackle, equipment, paraphernalia and fishing gear, and cargo, to be due the libelants as a compensation of the said salvage services as shall seem to the Court meet, together with their expenses in this behalf,

and such other further relief, or distress, as the Court may be competent to give in the premises.

CHARLES WUORI,
Owner.

JOHN KURTTI,
Seaman.

CYRUS C. CHRISTENSEN,
Seaman.

ARMAND SYVANEN,
Cook.

/s/ JAY BOWERMAN,
Proctors for Libelants.

State of Oregon,
County of Clatsop—ss.

I, Charles Wuori, being first duly sworn, depose and say that I am one of the libelants in the above entitled cause, and that the foregoing Libel in Rem is true, as I verily believe.

/s/ CHARLES WUORI.

Subscribed and sworn to before me this 4th day of August, A.D. 1945.

(Seal) /s/ A. C. FULTON,
Notary Public for Oregon.

My Commission Expires Jan. 25, 1948.

[Endorsed]: Filed Aug. 8, 1945. [9]

[Title of District Court and Cause.]

CLAIM OF OWNER

Tom Rustad, owner of the Motor Vessel "Melody," her engines, tackle, etc., intervening for his interest in the same, appears before this Honorable Court and makes claim to said vessel, etc., and says that he is the true and bona fide owner thereof, and prays to defend this suit accordingly.

TOM RUSTAD,

Subscribed and sworn to before me this 11th day of August, 1945.

[Seal] JEAN C. BEARDSLEY,
Notary Public for Oregon.

My commission expires: July 8, 1946.

[Endorsed]: Filed Aug. 14, 1945. [10]

[Title of District Court and Cause.]

CLAIMANT'S STIPULATION TO ABIDE BY AND PAY THE DECREE

Whereas a libel was filed in this Court on the 8th day of August, 1945, by Charles Wuori et al., against the Motor Vessel "Melody," etc., for the reason and causes in said libel mentioned; and

Whereas a claim to said vessel has been filed by Tom Rustad as owner thereof,

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern,

that the stipulators undersigned are jointly and severally bound in the sum of Fifteen Thousand Dollars ($15,000.00), conditioned that the claimant above named shall abide by and pay the money awarded by the final decree against the said vessel, her engines, tackle and gear, rendered in the cause by this Court, or, in the case of an appeal, by the Appellate Court.

TOM RUSTAD,
Claimant.
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By CLARENCE D. PORTER,
Attorney in Fact.

Executed this the 14th day of August, 1945.

[Endorsed]: Filed Aug. 14, 1945. [11]

[Title of District Court and Cause.]

ANSWER TO LIBEL

To the Honorable Judges of the above entitled Court:

To Rustad, both as claimant of the "Melody," etc., and personally, brings this, his answer to the libel in this cause, and thereupon admits, denies and alleges as follows:

Article I.

Answering the first article of the libel said Rustad, claimant and respondent, admits the same.

Article II.

Answering the second article of the libel said claimant and respondent denies the whole thereof, except as now alleged, to-wit, the "Melody" was about five miles due west of Northhead Light. It is true that no one was then aboard her or standing by, but the Coast Guard was within easy call, and in fact soon arrived on the scene. The "Melody" was lying on her starboard side half submerged, but was not foundered; but on the contrary, was floating and would have floated indefinitely, and in fact did float during all the ensuing hours while she was being towed into the Columbia River and to the Point Adams Coast Guard Station, where she did not arrive, according to the allegations of the libel, until 1:30 a. m., July 25th—a period of 11 hours. The crew of the "Melody" had not abandoned said vessel and she was not a derelict, the master and the crew having been [12] separated from her by the force of the wind which blew their rubber life-raft away from her, she drifting with the tide in the opposite direction, and in fact her master and crew returned to her with the Coast Guard about one-half hour after the "Stampede II" came to her. It is true that the "Melody" had been fishing for tuna fish, but not for the days alleged, but on the contrary for one day and four or five hours, and she had on board approximately four tons of ice and 3¾ tons of fish of the approximate value of $1400.00. It is not true, as alleged, that there were numerous and sundry lines and net adrift attached to the "Melody," or that there

was any hazard of any kind to the "Stampede II." It is true, as alleged, that there was a light southwest wind prevailing, with a light, moderate sea, and weather clear, and the tide at about one-half ebb. The "Melody" is 46.8 feet long, not 50 feet as alleged, and she and her equipment, previous to her accident, were worth, not $39,000.00 as alleged, but not to exceed $20,000.00.

Article III.

For answer to the third article of the libel, claimant and respondent denies knowledge or information sufficient to form a belief of the allegations that the crew of the "Stampede II" consulted together about salvage, and the allegations that Syvanen risked his life in taking a tow-line to the "Melody," and calls for proof of the same. All the remaining allegations of said Article III claimant and respondent denies specifically, except as herein in this article of the answer admitted, and in this respect says that the facts are as follows: The United States Coast Guard crash boat, with the crew of the "Melody" aboard, arrived at the wrecked "Melody" and found that the "Stampede II" had a line aboard her. The master and crew of the "Melody" had never abandoned her, but had only left her as aforesaid because of wind and tide, and intending to get the assistance of the Coast Guard and return to her, [13] which they did, but on their return they found the master of the "Stampede II," with his line aboard the "Melody" and evidently determined to make a salvage case

out of it if he could, and opposed to any interference by the master and crew of the "Melody." The master of the "Melody," so far from not assisting as alleged in the libel, did as a fact, by the use of his rubber raft, and at the request of the "Stampede II's" master, transfer one of the crew of the "Stampede II" from the "Melody" back to the "Stampede II." Thereupon, there being nothing further that the men of the "Melody" could do, they proceeded toward Astoria in the Coast Guard crash boat, and arrived at the Point Adams Station at about 5:00 p. m., but the claimant and respondent is informed and therefore says that soon after his departure from the "Melody," the "Stampede II," having towed her but a short way, was met by two Coast Guard boats—one of them the "Triumph," and both these also put lines on the "Melody" and continued the towing, when at about Buoy 5A, and still outside the jetties, the "Stampede II," by her own unskillful maneuvering, fouled her propeller in one of the lines of the Coast Guard boat, and became disabled and was thereafter incapable of rendering any assistance, and was in fact, from that point on, herself towed by one of the Coast Guard boats into the Point Adams Station, and the other Coast Guard boat—the "Triumph," from that place on, towed the "Melody" in alone. Claimant and respondent further says that at Buoy 5A, which is off Peacock Spit, the "Melody" was in more dangerous water than she was in the open sea where the "Stampede II" first picked her up, so that in fact the "Stam-

pede II" did not contribute to her safety at all, but left her in a more dangerous position than she had been in at the start, and from then on it was solely due to the "Triumph" that the "Melody" was brought in. Any and all allegations of said Article II not herein admitted or denied on information and belief are hereby specifically denied.

Article IV.

For answer to Article Fourth, claimant and respondent denies that the "Stampede II" and her equipment, etc., were worth $35,000.00, and denied knowledge or information sufficient to form a belief of her true value and of the other remaining allegations in said article, and calls for proof of the same.

Article V.

For answer to the fifth article of the libel claimant and respondent denies the allegations therein, except as already hereinbefore admitted, and except as now further admitted, to-wit, claimant and respondent admits that the Coast Guard crew beached the "Melody" at the Point Adams Station, and on the morning of July 25th pumped her out, and thereafter towed her to Astoria, where the cargo of tuna fish was sold for approximately $1400.00.

Article VI.

For answer to the sixth article claimant and respondent denies every allegation therein, and says that the value of the "Melody," her tackle, etc.,

at the time therein alleged, was not to exceed $10,-000.00.

Article VII.

For answer to the seventh article of the libel claimant and respondent denies knowledge or information sufficient to form a belief of the allegations therein, but in this respect alleges that if the "Stampede II" lost any line, as claimed, it was through her own carelessness and unskilled maneuvering.

Article VIII.

For answer to the eighth article claimant and respondent denies the same, and every allegation therein.

Article IX.

For answer to the ninth article claimant and respondent denies the same, and every allegation therein. [15]

Article X.

For answer to Article Tenth claimant and respondent denies the same, and every allegation therein.

Article XI.

For answer to Article Eleventh claimant and respondent admits the admiralty and maritime jurisdiction of the Court, but denies that all or singular the premises of the libel are true.

Wherefore claimant and respondent prays that the libel may be dismissed with costs to this claim-

ant, and respondent, or for such other, further and different relief as to the Court may seem just.

TOM RUSTAD,
Claimant and Respondent.

WOOD, MATTHIESSEN & WOOD,
ERSKINE WOOD,
LOFTON L. TATUM,
Proctors for Respondents.

[Duly verified.]

[Endorsed]: Filed Aug. 14, 1945.]16]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND FINAL DECREE

And now, to-wit, on the 30th day of January, 1946, this case having been heard on the pleadings and proofs, and after argument for the respective parties, and deliberation thereof being had, the Court finds:

First: That the libelant Charles Wuori at and during all the times herein referred to was and is the master and owner of the Oil Screw "Stampede II" together with her equipment, paraphernalia and fishing gear, and that the crew of said vessel were John Kurtti, Cyrus C. Christensen and Armand Syvanen.

Second: That on or about the 22nd day of July,

A.D. 1945, the Oil Screw "Melody," her home port being Petersburg, Alaska, whereof Tom Rustad was then and still is the owner and master, and having a crew of four (4) men besides the master, cleared the Port of Astoria, in the District of Oregon, on a tuna fishing venture or voyage in the waters of the Pacific Ocean.

Third: That on or about the hour of 2:30 o'clock p.m. on the 24th day of July, A.D. 1945, in the waters of the Pacific [17] Ocean, at a point approximately nine (9) miles north of the Columbia River and about nine (9) miles west or offshore from the Washington coast, the Oil Screw "Melody" was sighted by the libelants. That no one was aboard, nor was any vessel or party standing by for the purpose of rendering any assistance to said vessel "Melody." That at such time and place, the said Oil Screw "Melody" was swamped, the only exposed parts thereof being a small section of a corner of the top section of her pilot house, a part of her mast, one-fourth of the forward bait tank and one-third of the aft bait tank. That her bulwark was above water for approximately a lineal distance of six feet, the highest portion above water being about one foot, said section of the bulwark referred to being the turn of the port stern of said vessel. The deck of said vessel at the point just described was above water for an area of approximately two square feet, said vessel having a heavy list to starboard.

That said Oil Screw "Melody" had been for ap-

proximately two days engaged in fishing for tuna fish, and had on board approximately four (4) tons of ice for the purpose of preserving said catch, and at the time herein referred to had tuna fish of the approximate value of $1,400.00.

That there were numerous and sundry lines and nets adrift attached to said vessel "Melody," thereby presenting the hazard of fouling the wheel of any vessel attempting to salvage said vessel, her paraphernalia, equipment, and cargo.

That at such time a light southwest wind was prevailing and the sea was light moderate, the weather clear, and the tide was approximately at one-half ebb.

That said Oil Screw "Melody," her equipment, paraphernalia, fishing gear, was, immediately prior to her swamping, of the approximate value of $25,000.00, being a new vessel, of the approximate length of 50 feet, built of wood. and said vessel was [18] completed and launched in the year 1945.

Fourth: That at such time, the libelant Charles Wuori counseled with the members of the crew of the Oil Screw "Stampede II" concerning the possibility and hazards of salvaging said vessel "Melody." That by agreement between said master and the crew, libelant Armand Syvanen, at risk to his life and person, proceeded to board said vessel "Melody," at about the hour of 3:20 o'clock p.m., on said day, and made fast a tow line from the "Stampede II" to the rudder stock of said vessel "Melody," it being the only available place to make

fast a tow line. That after said tow line was made fast as aforesaid, the United States Coast Guard crash boat arrived with the crew of the vessel "Melody" on board, which said crew had been rescued from a life raft in the waters of the Pacific Ocean some two or three miles distant from the point where the vessel "Melody" was situated. That said crew had not theretofore been seen by any of the libelants. That none of the said crew went aboard the vessel "Melody" or the vessel "Stampede II," or made any offer of any assistance whatever in rendering salvage assistance to the said vessel "Melody," except respondent Tom Rustad assisted in the removal of libelant Syvanen from the "Melody" to the "Stampede II" in the life raft, but, on the contrary, remained aboard the United States Coast Guard crash boat, and at about 3:50 o'clock p.m. proceeded to shore and absented themselves during the entire salvage operations and offered no assistance whatever. Thereupon, at about the hour of 4:00 o'clock p.m. on said day, the said master and crew of the vessel "Stampede II" proceeded with the said vessel "Melody" in tow on a course towards Whistle Buoy F.L.R. (2), off the mouth of the Columbia River, so as to be able to tow said vessel "Melody" on a proper course into the Columbia River and a safe haven therein. That upon getting said tow under way, the said vessel "Melody" rode [19] upon a more upright position, although still low at the bow. That the undertaking and proceeding with said tow was at considerable risk to the lives and persons of libelants and risk

to the vessel "Stampede II," this being especially true when entering the tidal currents and sets of the Columbia River.

That said vessel "Melody" at the time the libelants took her under tow had a minimum of buoyancy. In this respect, said vessel was kept afloat by the ice in her hold, air pockets within her hull, and the fuel oil in her tanks, and upon the melting of said ice and the escaping of the air from said pockets, and the loss of said oil from her fuel tanks, and the replacement thereof with water, said vessel would sink or likely to sink and become a total loss. So, at all time, there was danger that said vessel "Melody" might sink, and especially so if not kept under way.

Fifth: That at the times herein mentioned, said Oil Screw "Stampede II," her equipment, paraphernalia, and fishing gear, was of the fair and reasonable value of $35,000.00. That at the time the said vessel "Melody' ' was sighted, the said vessel "Stampede II" was headed for the bottom fishing grounds to engage in a drag fishing venture, and had five (5) tons of ice, of the value of $25.00, on board, sufficient for a cruise of several days. That said vessel "Stampede II" is a heavy duty drag and tuna fishing vessel, of heavy construction, and powered with a 100 horsepower "Caterpillar" Diesel engine, having a length of 45.45 feet and breadth of 14.1 feet, and a depth of 6.65 feet.

Sixth: That about the hour of 3:00 o'clock p.m., the master of said vessel "Stampede II" spoke by

radio telephone to the United States Coast Guard, and advised them of the facts, and requested the said Coast Guard to make immediate search for the crew of the said vessel "Melody," as well as to send assistance to the "Stampede II" and her crew for the purpose of attempting the salvage of the said vessel "Melody." That in response thereto, [20] the United States Coast Guard sent its oil screw life boat "Triumph," a vessel of the approximate length of 52 feet, beam 13 feet, and depth 6½ feet, and powered with 160 horse power Superior Diesel engine, and two gas screw life saving surf boats, each of the approximate length of 36 feet, beam 11 feet, draft 4 feet, and each powered with 100 horse-power Sterling gas engine. That the "Triumph" arrived at the tow or salvage operations at approximately 5:50 o'clock p.m., and one life saving surf boat arrived approximately fifteen minutes earlier, and each of said vessels, at the request of libelant Charles Wuori, made fast a tow line to said vessel "Melody," and said two vessels, together with the vessel "Stampede II," proceeded with the tow, and upon arriving at a point on the main channel range of the Columbia River, approximately abreast of the best end of both the North and South Jetties of the Columbia River, at about the hour of 11:15 or 11:30 o'clock p.m., the wheel of the vessel "Stampede II" became fouled with the tow line of the "Triumph." That the "Stampede II" released the tow temporarily to free her wheel, which was done sufficiently to permit her to continue the tow, and she was fully able and seaworthy and of sufficient

power to continue the tow, but, as a matter of precaution and good seamanship, under the prevailing circumstances, the said vessel "Stampede II," at the request of her master, went under partial tow of one of the surf life saving boats above mentioned, and they stood by until the said vessel "Melody" was successfully navigated over and across the Columbia River bar and well inside of the Columbia River. That said vessel "Stampede II", its owner and crew, were ready and able and it was their intention to resume the tow, if it became necessary, and to render any and all necessary assistance or services to the vessel "Melody," that might have been necessary to assure her safety. That said tow was completed at approximately 1:30 o'clock a.m. on July 25, 1945, when said vessel "Melody" was beached on a level, firm, sandy beach near the United States Coast Guard Station at Hammond, Oregon, at approximately high tide. That approximately at 7:00 o'clock a.m., on July 25, 1945, the tide had receded sufficiently to start [21] work on preserving the engine, equipment, paraphernalia and cargo of said vessel "Melody" from further damage on account of the sea waters. Thereupon, the Coast Guard, at the request of libelants, and in company with them, proceeded to remove the sea water from the hull and bilge of said vessel "Melody," which required approximately four hours' labor.

That immediately upon the vessel "Melody" becoming afloat, she was, at the request of said Charles Wuori, the master and owner of the vessel "Stam-

pede II," towed by the United States Coast Guard to the Port of Astoria, where the cargo of tuna fish of such vessel could be and was unloaded and saved, which was the proper procedure to adopt to save such cargo under the circumstances. That such cargo of tunt fish was disposed of in the market in good merchantable condition.

Seventh: That the value of the vessel "Melody," upon arriving at the termination of the tow and the sea water removed from her hull and bilge, together with her tackle, equipment, paraphernalia and fishing gear, was approximately $17,500.00.

Eighth: That at the time of the fouling of the wheel of the vessel "Stampede II," it was necessary for the "Stampede II" to release 300 fathoms of its tow line in order to free her wheel. This was lost to the "Stampede II," to the damage of the owner. That libelant Wuori expended the sum of approximately $25.00 for fuel oil, $..... for radio telephone, $..... for ice, and $..... for groceries, all the foregoing totaling $300.00.

Ninth: That libelants in engaging in said salvage operations lost a trip and a half of bottom fishing, at a loss to them of from $3,000.00 to $5,000.00. That libelants, rendered a valuable service in the salvaging of the vessel "Melody," its equipment, paraphernalia and cargo, and that the entire salvage operations in which both the libelants and the United States Coast Guard engaged were of the fair and reasonable value of $6,000.00. That the fair and reasonable value of the service per-

formed [22] by the United States Coast Guard in this respect is the sum of $2,000.00 and, therefore, the value of the service performed by the vessel "Stampede II" and the libelants is the sum of $4,000.00.

Tenth: That but for the assistance so rendered by the libelants, the said vessel "Melody," her equipment, tackle, paraphernalia, fishing gear, and cargo pending, were likely, to have been entirely and wholly lost.

Eleventh: The Court further finds that a stipulation was filed in these proceedings by respondent Tom Rustad, as Principal, and the Fidelity and Deposit Company of Maryland, as Surety, in the sum of $15,000.00, conditioned that the claimant above named should abide by and pay the money awarded by the Final Decree against the said vessel, her engines, tackle and gear, rendered in the cause by this Court, or, in the case of an appeal, by the Appellate Court.

The Court, therefore, finds as Conclusions of Law:

First: That libelants are entitled to a judgment and decree against respondent Tom Rustad, the vessel "Melody," her engines, tackle, gear and equipment, and the surety Fidelity and Deposit Company of Maryland in the sum of $4,000.00 for the services performed by libelants, together with the further sum of $300.00 for the loss of cable, and the cost of fuel oil consumed in making the tow, and

the cost of radio telephone, groceries and the loss of ice, together with their costs, and such judgment to constitute a lien against the said vessel "Melody," her engines, tackle, gear, and equipment.

CLAUDE McCOLLOCH,

Judge. [23]

It Is, Therefore, Considered, Ordered, Adjudged and Decreed that the above named libelant recover of and from respondents Oil Screw "Melody," her engines, tackle, gear and equipment, and Tom Rustad, and his stipulator Fidelity and Deposit Company of Maryland, the sum of $4,000.00 for their services as salvors as in the libel set forth, together with the further sum of $300.00 for the loss of cable and the cost of fuel oil consumed in making the tow, and the cost of radio telephone and groceries and the loss of ice, together with their costs;

And It Is Ordered that the said sum of $4,300.00 be distributed as follows:

1. $2,000.00 to libelant Charles Wuori, as owner and master of the vessel "Stampede II", her equipment, paraphernalia and fishing gear, together with the further sum of $300.00 cost of cable lost, and cost of fuel oil consumed, radio telephone, groceries, and ice lost, and the further sum of $..... costs of these proceedings.

2. $500.00 to libelant John Kurtti.

3. $500.00 to libelant Cyrus C. Christensen.

4. $1,000.00 to libelant Armand Syvanen.

It Is Further Ordered, Adjudged and Decreed that libelants shall have a lien against said vessel "Melody," her engines, tackle, gear and equipment, for the full amount of this judgment. That execution issue therefor.

Dated this 30th day of January, 1946.

CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed Jan. 30, 1946. [24]

In the District Court of the United States
For the District of Oregon

Civ. No. 2868

Oil Screw MELODY and TOM RUSTAD, Owner and Claimant,

FIDELITY & DEPOSIT COMPANY OF MARYLAND, a corporation, Stipulator,

Appellants,

vs.

CHARLES WUORI, JOHN KURTTI, CYRUS C. CHRISTENSEN and ARMAND SYVANEN,

Appellees.

PETITION FOR APPEAL

Come now Tom Rustad, owner and claimant of the Oil Screw Melody, and Fidelity and Deposit

Company of Maryland, a corporation, stipulator, being aggrieved by the final decree, rulings and findings of the United States District Court in the above entitled cause, and, desiring to appeal from the entire final decree, rulings and findings of said Court, do hereby respectfully petition to the Court for an order allowing said appeal.

Dated this 22nd day of April, 1946.

TOM RUSTAD,
Owner and Claimant of the Oil Screw Melody,

FIDELITY & DEPOSIT COMPANY OF MARYLAND,
a corporation, Stipulator.

By WOOD, MATTHIESSEN & WOOD,
Proctors for Appellants.

Service of the foregoing accepted this 22nd day of April, 1946.

JAY BOWERMAN,
Of Proctors for Appellees.

[Endorsed]: Filed April 24, 1946. [25]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

This matter came on regularly for hearing this day upon application of Tom Rustad, owner and claimant of the Oil Screw Melody, and Fidelity &

Deposit Company of Maryland, a corporation, Stipulators, appearing by one of their proctors, Lofton L. Tatum, for an order allowing petitioners' appeal in the above entitled cause, and, it appearing to the Court that said order should be entered,

It Is Ordered that the appeal herein be and the same hereby is allowed.

Dated this 24th day of April, 1946.

CLAUDE McCOLLOCH,
Judge.

Service of the foregoing accepted this 22nd day of April, 1946.

JAY BOWERMAN,
Of Proctors for Appellees.

[Endorsed]: Filed April 24, 1946. [26]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

The trial court erred in the following particulars:

I.

In holding, in effect, that the appellees rendered salvage services of a high order, entitling them to the awards made in the decree, instead of holding that the services were in the nature of towage, or at most salvage of a low order.

II.

In holding, in effect, that the Melody was in

serious danger and might sink, and that "but for the assistance so rendered by the libelants," she was likely "to have been entirely and wholly lost." This holding is especially erroneous because it ignores the presence of the Coast Guard, which was on the scene almost from the beginning, and in fact performed most of the towing.

III.

In holding that the appellees incurred danger to their persons and property; and in not holding that, on the contrary, there were no unusual risks incurred at all; nothing beyond an ordinary towing operation. [27]

IV.

In holding that appellee Syvanen boarded the Melody "at risk to his life and person."

V.

In holding that the Stampede II, after she fouled her wheel in the Triumph's line, stood by, and was ready and able to perform further services if needed; and in not holding that, on the contrary, she was, from this time on, disabled, and useless, and had to be towed in herself by the Coast Guard.

VI.

In holding that the value of the Melody, prior to the service, was $25,000, and after it, $17,000.

VII.

In holding that appellees lost $3000 to $5000 worth of fishing.

VIII.

In holding that the services rendered by appellees and the Coast Guard were, together, worth $6000, and in apportioning two-thirds of this to appellees.

IX.

In entering its decree awarding $4300 to appellees, apportioned as in said decree.

X.

In summarily including in said decree the stipulator Fidelity & Deposit Company of Maryland, without first giving it, in accord with admiralty practice, an opportunity to perform the engagement of its stipulation.

WOOD, MATTHIESSEN & WOOD,
Proctors for Appellants.

Service of the foregoing accepted this 22nd day of April, 1948.

JAY BOWERMAN,
Of Proctors for Appellees.

[Endorsed]: Filed April 24, 1946. [28]

[Title of District Court and Cause.]

CITATION ON APPEAL

To Charles Wuori, John Kurtti, Cyrus C. Christensen, and Armand Syvanen, and to A. C. Fulton and Jay Bowerman, their Proctors, Greeting:

Whereas, Tom Rustad, owner and claimant of the

Oil Screw Melody, and Fidelity & Deposit Company of Maryland, stipulator, have already appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the United States District Court for the District of Oregon in your favor, and have given the security required by law;

You Are, Therefore, Hereby Cited and Admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, in San Francisco, California, within forty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this 24th day of April, 1946.

CLAUDE McCOLLOCH,
Judge.

Service of the foregoing accepted this 24th day of April, 1946.

JAY BOWERMAN,
Of Proctors for Appellees.

[Endorsed]: Filed April 24, 1946. [29]

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men By These Presents that Fidelity and Deposit Company of Maryland, a Maryland

corporation authorized to do a surety business in Oregon, is held and firmly bound unto Charles Wuori, John Kurtti, Cyrus C. Christensen, and Armand Syvanen, in the sum of Two Hundred Fifty and no/100 ($250.00) Dollars, to be paid to said Charles Wuori, John Kurtti, Cyrus C. Christensen, and Armand Syvanen, their heirs and assigns, for the payment of which well and truly to be made, the undersigned Fidelity and Deposit Company of Maryland binds itself, its successors and assigns, firmly by these presents.

The condition of this obligation is such that whereas Tom Rustad, owner and claimant of the Oil Screw Melody, and Fidelity and Deposit Company of Maryland, a corporation, Stipulators, have prosecuted or are about to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from a final decree entered in the above entitled Court and cause on the 30th day of January, 1946.

Now Therefore, if the above named appellants Tom Rustad, and Fidelity and Deposit Company of Maryland, a corporation, shall prosecute said appeal with effect and pay all costs which may be [30] awarded against them if the appeal is not sustained, then this obligation shall be void. Otherwise the same shall remain in full force and effect.

FIDELITY & DEPOSIT COMPANY OF MARYLAND,

Executed this 18th day of April, 1946.

[Seal] By /s/ CLARENCE D. PORTER,
Attorney in Fact.

Countersigned:

/s/ CLARENCE D. PORTER,
Resident Agent.

Service of the foregoing accepted this 24th day of April, 1946.

/s/ JAY BOWERMAN,
Of Proctors for Appellees.

[Endorsed]: Filed April 24, 1946. [31]

[Title of District Court and Cause.]

ORDER STAYING EXECUTION

Pending the appeal of this case, or until a further order of this Court or the Appellate Court,

It Is Hereby Ordered that execution of the decree entered in this Court on January 30, 1946, be stayed and that a bond in the amount of $4,300.00 be filed to stand as supersedeas bond.

Dated this 29th day of April, 1946.

CLAUDE McCOLLOCH,
Judge.

Service of the foregoing accepted this 29th day of April, 1946.

JAY BOWERMAN,
Of Proctors for Appellees.

[Endorsed]: Filed April 29, 1946. [32]

[Title of District Court and Cause.]

BOND ON APPEAL STAYING EXECUTION

Know All Men by These Presents that Fidelity and Deposit Company of Maryland, a Maryland corporation authorized to do a surety business in Oregon, is held and firmly bound unto Charles Wuori, John Kurtti, Cyrus C. Christensen and Armand Syvanen, in the sum of Four Thousand Three Hundred ($4,300.00) Dollars to be paid to the said Charles Wuori, John Kurtti, Cyrus C. Christensen, and Armand Syvanen, their heirs and assigns, for the payment of which well and truly to be made, the undersigned Fidelity and Deposit Company of Maryland binds itself, its successors and assigns firmly by these presents.

Whereas Tom Rustad, owner and claimant of the Oil Screw Melody, and Fidelity and Deposit Company of Maryland, a corporation, stipulator, have appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree of the District Court of the United States for the District of Oregon bearing date of the 30th day of January, 1946, which decree orders the said Tom Rustad and Fidelity and Deposit Company of Maryland, a corporation, stipulator, to pay libelants the sum of Four Thousand Three Hundred ($4,300.00) Dollars, and

Whereas said Tom Rustad and Fidelity and Deposit Company, [33] a corporation, stipulator, desire during the progress of such appeal to stay the execution of the said decree of the District Court;

Now Therefore, the condition of this obligation is such that if the above named appellants, Tom Rustad, owner and claimant of the Oil Screw Melody, and Fidelity and Deposit Company of Maryland a corporation, stipulator, shall prosecute said appeal with effect and shall abide by and perform whatever decree may be entered by the United States Circuit Court of Appeals for the Ninth Circuit in this cause, or on the mandate of said Court by the Court below, then this obligation shall be void. Otherwise the same shall be and remain in full force and effect.

Executed this 29 day of April, 1946.

FIDELITY & DEPOSIT COMPANY OF MARYLAND,
By CLARENCE D. PORTER
Attorney in Fact

Countersigned:
/s/ CLARENCE D. PORTER
Resident Agent

This bond approved as to form, amount and sufficiency of surety.

4/30/46.

CLAUDE McCOLLOCH

Service of the foregoing accepted this 30 day of April, 1946.

JAY BOWERMAN
Of Proctors for Appellees

[Endorsed]: Filed April 30, 1946. [34]

[Title of District Court and Cause.]

ORDER TO SEND ORIGINAL EXHIBITS TO APPELLATE COURT

It Is Hereby Ordered that the Clerk of this Court send to the United States Circuit Court of Appeals at San Francisco original exhibits Libelants' Numbers 1, 2 and 4, and Respondents' Number 3, as well as the original copy of invoice from Kern & Kibbe to Tom Rustad, dated August 22, 1945, all in this Court and cause for use on the appeal in this cause to said Appellate Court.

Dated this 7th day of May, 1946.

CLAUDE McCOLLOCH
Judge

Service of the foregoing accepted this 7th day of April, 1946.

JAY BOWERMAN
Of Proctors for Appellees.

[Endorsed]: Filed May 7, 1946. [35]

[Title of District Court and Cause.]

PRAECIPE

To Lowell Mundorff, Clerk of the above entitled Court:

You will please include in the apostles on appeal to be used in the appeal of the within case to the United States Circuit Court of Appeals for the Ninth Circuit, the following:

1. Libel in rem.

2. Claim of owner.

3. Claimants' stipulation to abide by and pay the decree.

4. Answer to libel.

5. Testimony as taken on the part of the libelants.

6. Libelants' exhibits Numbers 1 and 2.

7. Libelants' exhibit Number 4, only those pages (2) showing the July, 1945, tide table.

8. Testimony taken on the part of the respondents.

9. Respondents' exhibit Number 3.

10. Invoice from Kern & Kibbe to Tom Rustad, dated August 22, 1945.

11. Findings of fact and conclusions of law.

12. Final decree.

13. Petition for appeal.

14. Order allowing appeal. [36]

15. Assignments of error.

16. Citation on appeal.

17. Bond for costs on appeal.

18. Order staying execution.

19. Supersedeas bond.

20. Order to send original exhibits to Appellate Court.

21. Praecipe for apostles.

22. Docket Entries.

23. Stipulation re. time tables.

LOFTON L. TATUM
Of Proctors for Appellants

Service of the foregoing accepted this 7 day of May, 1946.

JAY BOWERMAN
Of Proctors for Appellees

[Endorsed]: Filed May 7, 1946. [37]

[Title of District Court and Cause.]

DOCKET ENTRIES

1945

Aug. 8 Filed libel in rem and personam.

Aug. 8 Issued warrant of arrest & Monition—to marshal.

Aug. 14 Entered order releasing boat on $15,000.00 bond. Fee.

Aug. 14 Filed claimant's stipulation to abide and pay decree.

Aug. 14 Filed claim of owner, Tom Rustad.

Aug. 14 Filed answer to libel.

Aug. 17 Filed warrant of arrest & monition.

Aug. 25 Filed motion for order setting for trial.

Aug. 29 Filed acknowledgment of the receipt of a copy of the libel.

Oct. 22 Issued 2 subpoenas for defendant.

1945

Oct. 29	Record of Pretrial Conf. McC.
Oct. 29	Record of trial—evidence adduced. McC.
Oct. 30	Record of trial—evidence adduced. McC.
Oct. 30	Entered order that information be obtained from Kern & Kibbe Co. McC.
Oct. 31	Record of trial. McC.
Oct. 31	Entered order that briefs be filed. Pltfs 2 weeks Defts 2 weeks & Pltf 1 week. McC.
Oct. 31	Filed exhibits #1, 2, 3, 4.
Nov. 10	Filed brief for libelants.
Dec. 3	Filed reply brief for libelants.
Dec. 4	Filed transcript Ex Parte Proceedings Aug. 14, 1945.

1946

Jan. 11	Entered order setting hearing on proposed Findings, Judgment and Decree for Jan. 21, 1946 at 10 a.m. McC.
Jan. 21	Filed record of hearing on proposed Findings, Conclusions & Decree argued & taken under advisement. McC.
Jan. 30	Filed & entered Findings of Fact, Conclusions of Law and Final Decree. Attys. notified. McC.
Jan. 30	Entered Judgment in Lien Docket.
Apr. 9	Filed judgment roll.
Apr. 24	Filed & entered order allow appeal. McC.
Apr. 24	Citation on appeal signed by Judge McColloch—to C.C.A. with transcript. McC.
Apr. 24	Filed petition for appeal.
Apr. 24	Filed assignments of error.
Apr. 24	Filed cost bond.

1946

Apr. 29 Filed & entered order staying execution. Attys. notified. McC.

Apr. 30 Filed bond on appeal staying execution.

May 7 Filed designation of contents for CCA.

May 7 Filed & entered order to send original exhibits to appellate court. McC.

May 22 Filed stipulation re tide schedule made part of apostles. [38]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed between the parties to this proceedings, by and through their respective proctors, that there shall be made a part of the Apostles on Appeal and printed in the record the following:

"All Tides Standard Times. For War Time Add One Hour.

July 24, 1945, Tuesday—Low Water, 7:16 A. M., 1.1 ft. Low Water, 7:04 P. M., 2.8 ft.

July 25, 1945, Wednesday—High Water, 0:55 A. M., 8.6 ft. High Water, 2:23 P.M., 6.8 ft.

/s/ WOOD MATTHIESSEN & WOOD

/s/ LOFTON L. TATUM

Proctors for Appellants

/s/ A. C. FULTON

/s/ JAY BOWERMAN

Proctors for Appellees.

[Endorsed]: Filed May 22, 1946. [39]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

United States of America
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 40 inclusive, constitute the transcript of record upon the appeal from a judgment of said court in a cause therein numbered Civil 2868, in which Tom Rustad, Respondent and Owner and Claimant of the Oil Screw Melody and Fidelity & Deposit Company of Maryland, a corporation, Stipulator, are Appellants, and Charles Wuori, John Kurtti, Cyrus C. Christensen, and Armand Syvanan are Libelants and Appelles; that said transcript has been prepared by me in accordance with the designation of contents of the record on appeal filed by the Appellants and in accordance with the rules of Court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of the record and procedings had in said Court in said cause, in accordance with the said designation, as the same appears of record and on file at my office and in my custody.

I further certify that the cost of comparing and certifying the within transcript is $38.80 and that the same has been paid by said Appellant.

I further certify that I have enclosed a dupli-

cate transcript of evidence dated October 29, 1945 (Testimony as taken on the part of the Libelants and Testimony taken on the part of the Respondents), together with Libelants' exhibits numbers 1, 2 and 4, Respondents' exhibit number 3 and Invoice from Kern & Kibbe to Tom Rustad, dated August 22, 1945.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court in Portland, in said District, this 27th day of May, 1946.

[Seal] LOWELL MUNDORFF,

Clerk

By /s/ F. L. BUCK

Chief Deputy [40]

In the District Court of the United States
for the District of Oregon

Civil No. 2868

CHARLES WUORI, JOHN KURTTI, CYRUS C. CHRISTENSEN, and ARMAND SYVANEN,

Libelants,

vs.

Oil Screw "MELODY", and TOM RUSTAD, Owner,

Respondents.

Portland, Oregon, Monday, October 29, 1945.

10:48 o'clock a. m.

Before: Honorable Claude McColloch, Judge.

Appearances: Messrs. A. C. Fulton and Jay Bowerman, Proctors for the Libelants. Messrs. Erskine Wood and Lofton L. Tatum, Proctors for the Respondents.

Alva W. Person, Court Reporter.

PROCEEDINGS:

Mr. Fulton: If your Honor please, in this case here some of the facts took place during the presence of the petitioners [1] or libelants. Others of them took place in the presence of respondents. A few of them took place in the presence of both

* Page numbering appearing at top of page of original Reporter's Transcript.

parties, and consequently I don't think there is very much difference in the facts. It is my thought that we could try this case on the pleadings and save considerable time, and I think we could put our case on probably. I have four witnesses, just the members of the crew, that can tell our story. I don't think it will be necessary to call all of them. Probably two of them will be sufficient. They will be here if your Honor wants them. And I think the attorney here for the other party agrees with me on that.

I would be surprised if we couldn't pretty well clean up this case today. What do you think?

Mr. Wood: This is a salvage case, in which Mr. Futlon and Mr. Bowerman's client salvaged our vessel and sold the salvage.

We have subpoenaed for appearance tomorrow morning two chief mates at Point Adams and they will be here tomorrow morning at ten o'clock. For that reason we could not finish our case today.

We have the owner of the vessel claimed to have been salvaged and the marine surveyor, who will testify as to the value of the vessel, and those two Coast Guardsmen.

I agree with Mr. Fulton that there is very little necessity for pre-trial. It is just a question of fact. They [2] claim their vessel came up alongside of our vessel, put a line on it and towed it into Astoria and want the value of it for doing it. That is the essence of the case.

The Court: Well, it sounds simple, but why are you having this trial if it is simple?

Mr. Wood: That is easy, too. Mr. Fulton and his client claims $35,000 for the services and we don't think they are entitled to anywhere near that amount of money. It is a question of what they are entitled to.

Mr. Fulton: I don't understand we are asking for $35,000.

Mr. Wood: The value of the vessel was $35,000. At the time the bond was put up for release of this vessel they appeared before Judge Fee and stated a bond should be put up for the amount of $35,000. Judge Fee ordered a $15,000 bond. That is why I said that.

The Court: How much are you claiming, Mr. Fulton?

Mr. Fulton: We are claiming such amount as your Honor may think we are entitled to.

The Court: Yes, but I want you to name a figure before you get through, and I want Mr. Tatum to name a figure if he is going to take a position in the alternative.

Mr. Fulton: Well, I think we will be able to do that, in substance, anyhow, probably at the close of the trial.

The Court: All right. Call a witness. Let's start in.

Mr. Fulton: You don't want statement of the case made [3] before we start?

The Court: I read your papers the other day. I will be glad to hear you further.

Mr. Fulton: All right. Mr. Wuori.

LIBELANTS' EVIDENCE

The Clerk: Will you state your name.

CHARLES WUORI

was therupon produced as a witness in behalf of the Libelants and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Fulton:

Q. Will you please give your name, Mr. Wuori.

A. I am a little bit hard to hear. I can't hear.

Q. Will you please give your name.

A. My name is Charlie Wuori.

The Court: Do you want to sit in the box over there?

Mr. Fulton: Q. Mr. Wuori, speak up so the Judge can hear you. What is your name?

A. Charlie Wouri.

Q. Where do you live?

A. City of Astoria.

Q. How long have you lived there?

A. Well—— [4]

Q. You have to talk loud, Charlie.

A. Well, it is four years.

Q. Four years. Where did you live before that?

A. Out of Grays Harbor.

Q. Grays Harbor. What business are you engaged in? A. Fishing.

Q. What type of fishing? A. Deep sea.

Q. How long have you been engaged in the deep sea fishing? A. About thirty years.

Q. Do you own your own vessel?

A. Yes, I do.

Q. How long have you owned a vessel of your own?

A. Well, this present one is only four years old, but I have always had my own vessels.

Q. You have always owned your own vessel?

A. Yes.

Q. Just explain to the Judge what you mean by deep sea fishing. What type of deep sea fishing do you do?

A. Deep sea, many different types, halibut fish, drag fish and so forth.

Q. Just tell the Court the kind you have been engaged in.

A. The last four years I have been tuna fishing or drag fishing.

Q. Just briefly explain that to Judge McColloch. [5]

A. What do you mean, equipment?

Q. In equipment, and so forth; the size of your vessel, how it is constructed and how you are fixed. A. How do you want?

Q. How big is your vessel?

A. A 50-footer over all.

Q. What is the value of it?

A. About thirty-five thousand.

Q. Thirty-five thousand dollars. And is it of heavy construction?

A. Real heavy construction, yes.

Q. What kind of engine?

A. A hundred horsepower caterpillar.

(Testimony of Charles Wuori.)

Q. How old an engine is that?

A. Two years old.

Q. What is the value of that engine?

A. At the factory it is fifty-two hundred, besides the installation—engine alone.

Q. Now on the 22nd of July—I think that was the date; somewhere along about there—were you headed at sea, whatever date it was? What date was that?

A. Well, I cannot remember without the — I think it was the 24th.

Mr. Fulton: What date was that?

Mr. Tatum: The 24th. [6]

Mr. Fulton: Q. The 24th is right. All right. Now you just relate, from your own words, what took place on the 24th day of July, 1945. Just start from the beginning and tell the Judge the story right through, in your own words.

A. Well, we left Astoria in the morning; the time I cannot remember, what time we left; but anyhow, we started out for fishing, and then we went over the bar. Then we were somewhere around perhaps six or seven miles offshore and we sighted a vessel. It didn't really look the way the vessel should look from the distance, so we went closer and closer, and finally we saw it was a submerged vessel, only part of it wasn't. The whistle post, very little over the stern on top of the pilot house mast and fishing posts were up and some nets were hanging on the mast. So we thought the survivors might be around there somewhere. We made several circles

(Testimony of Charles Wuori.)
around it looking for survivors but we could not find anybody. So I made a telephone call to the Coast Guard at Point Adams to inquire about it, if they knew anything about the Melody and her crew, and they said they didn't know anything about it. So I made another telephone call through the marine operator about seeing our Columbia River Packers Association office and I talked to Frank Hoglund and inquired about it, what company this particular boat—who it was fishing for, and also—well, when I made the call next to the Coast Guard I asked him to send a couple of surfboats out, or lifesaving boats, so we were able [7] to get that in on the next flat tide in the Columbia.

Q. Did you ask them to make search for the crew?

A. I did. And also I made a telephone call to Frank Hoglund. I asked him to make another call for Coast Guard, and also tell him about trying to search for the crew. You see, the time when we could not find the survivors we thought they might have some explosion in the forecastle.

Q. I don't quite understand what you mean by that. You said you thought possibly there had been an explosion in the boat?

A. Yes, in the forecastle. I could not see any other way how a boat like that could have been sunk or submerged in the water. I thought it had been entirely under it and the survivors were in there.

(Testimony of Charles Wuori.)

Q. Just talk to the Judge. Then what did you do after that?

A. So I told Frank Hoglund I would not be able to keep the receiver around until we got the tow lines on it, and told him it seemed like it was sinking on our side, if they didn't try to get the line on it as soon as possible.

Q. Just explain to his Honor about what you meant by the receiver—could not keep the receiver up. What did you mean by that?

A. You see, we have got two-way radio, they call it, receiving and transmitting set.

Q. In other words, you meant that you were going to go to work?

A. We were going to work and not going to stand by the Melody? [8] Or I told Frank I am going to call him up as soon as I get the line on, which I did, and also the Coast Guard at Point Adams.

Q. All right. Did you have any discussion with your crew as to whether or not you would attempt salvage operations?

A. No. Well, we talked the matter over and said, "Maybe them whole crew is dead in there," and we try to get that thing in as soon as possible. I guess we could have made it alone but we only had about—well, it was just about half tide, half ebb left when we got there, and I thought it might sink under us if we don't get in with the next tide.

Q. What was the condition of the weather and the wind at that time?

(Testimony of Charles Wuori.)

A. There wasn't hardly any wind at all—very little wind. After thirty years of time I have been at sea I saw that much fine weather as there was. Seldom you see it, maybe once in five or ten years, such nice weather as that particular weather when we found it first.

Q. Were there any swells?

A. Yes, sir, quite a bit—ground swells.

Q. Just explain what ground swells are.

A. Well, a swell that wouldn't hardly get any force behind it.

Q. Long rollers? A. Long rollers.

Q. What direction was the wind, what wind there was? [9]

A. If anything it was southwest.

Q. Southwest? A. Yes.

Q. Now getting back to our time, what time was that you sighted this boat the first time approximately? I know you didn't log all of those things at the time, did you? A. No, no.

Q. Just tell the Judge.

A. We didn't have no bookkeeper, or anything like that, and when we are working it is next to impossible to tell just what time this and that had happened.

Q. What is your best judgment about what time it was when you first sighted the Melody?

A. It seems to me it was around two o'clock. I could not tell offhand now. At the time when my memory was fresh, when I was at your office——

Q. You have alleged in here about 2:30 P.M.?

(Testimony of Charles Wuori.)

A. Yes, I think it was somewhere around that.

Q. Now, you didn't make the line fast to the Melody yourself? One of your crew did that?

A. Yes.

Q. Who were your crew on that occasion?

A. Armand Syvanen.

Q. Who else, if any?

A. On board the boat? [10]

Q. Yes.

A. Cy Christensen and John Kurtti.

Q. Four of you?

A. Four of us; that including me, too.

Q. All right. Then after you had made the search did you telephone?

A. Yes. Then I telephoned after I search for the crew.

Q. Just tell what you did about making the lines fast; how was that done—your towline?

A. Well, one of the crew members, Armand, went down aboard the boat, and when we got down we throwed a heaving line up for him, and I don't know how long he worked. It seems to me it was quite a length of time because it was difficult to get a line any place there.

Q. Was there any danger in your opinion of anything; that is, making that line fast?

A. Yes.

Q. Just explain why.

A. Well, in the first place, the boat was submerged so much there wasn't hardly any place for foothold on it and he might slip.

(Testimony of Charles Wuori.)

Q. Go ahead.

A. I think the boat was listing, a 45 degree list in every direction.

Q. Did you watch Armand when he was tacking the line? [11]

A. Yes. Before he went on board the boat I told him about it. He could do it on his own risk, as I wouldn't go on there at any consideration.

Q. And you spoke to him about that?

A. Yes.

Q. You pointed out that there was danger?

A. Yes.

Q. How far was the Stampede—that was the name of your vessel? A. Yes.

Q. How far was that from the Melody at the time you made fast the line?

A. Well, we went pretty close to it at first to get him on board the boat. Then when he got on there we throwed heaving line for him. That is a lifeline, which you are able to throw quite a distance.

Q. Why didn't you want to stand close by the Melody?

A. By gosh, there was all kinds of ropes, nets and everything else is hanging around there and we might foul our wheel; then we would be helpless, too.

Q. All right. How was the line made fast? Of course Mr. Armand can tell that. But did you see him working there? A. I sure did.

Q. How deep was the water?

(Testimony of Charles Wuori.)

A. Well, I only saw his head.

Q. How was he dressed when he went aboard?

A. Undressed entirely, except two or three pair of socks?

Q. Did he have a pair of shorts on?

A. I think he had.

Q. How old a man is Armand, do you know?

A. I wouldn't know. I think he was around thirty-five.

Q. All right. After you made your line fast what happened?

A. Well, we were practically through. Armand was still aboard the boat.

Q. Then what happened? What is the next thing that took place?

A. Well, then, the U. S. Navy, or Army, or Coast Guard crashed.

Q. Crashed, c-r-a-s-h-e-d?

A. Yes, crashed. It is not really lifesaving station boats. It is one of them which has considerable speed. I think it makes at least thirty-five miles an hour, instead of an ordinary Coast Guard boat, only making from eight to ten. She arrived there. I asked them to assist us and they say they are not equipped for any towing, only for the life, not property. They were there for some length of time. I could not say offhand how long they were around there. Then they didn't make any attempt to help us, of any kind. It had sort of rubber life raft on it. We asked them to take one of my crew

(Testimony of Charles Wuori.)

members off of the Melody so that he didn't have to swim back, which they did, and then they left us.

Q. Did you request them to do anything?

A. Yes, I did, the first thing when they came.

Q. What did you ask them? Tell the Judge what you requested them to do.

A. Well, we asked them to help us tow them in, tow in the Melody, and they said they were not equipped for towing; just for saving life, not property.

Q. How about putting on some chafing gear?

A. Then I asked them, have they got anything to put on chafing gear, to prevent our rope, which was around the rudder-stock, chafing, but they didn't answer. They just left us. They didn't say "Yes" or "No."

Q. Were you ever refused any assistance on their part?

A. Yes, I asked assistance but they didn't do anything, except take the chafing gear off the Melody.

Q. What was the chafing gear?

A. Chafing gear could be anything, oilskin or anything, to prevent the rope when it comes at sharp angle, to prevent wearing it out.

Q. Then what happened from that time on?

A. They leave—they left.

Q. Did you at any time know that the crew of the Melody weren't aboard the Melody?

A. Never at any time.

(Testimony of Charles Wuori.)

Q. What is your best judgment how long they were there?

A. We couldn't tell. Of course, as I said, we never keep the time, but it seems to me it was five to fifteen minutes, somewhere [14] around there.

Q. That is the longest they stayed?

A. Yes.

Q. Then what is the next thing that happened after they left? A. After they left we——

Q. Had you started towing?

A. We were towing, and the time when they put one crew member back on the Stampede we started towing right away.

Q. Then after you started towing——

A. Then I——

Q. Mr. Wuori, I want to ask you one more question. Did you throw over any lead or make any soundings? A. Yes.

Q. To locate your position?

A. Yes. We had thirty-five fathom on the bottom.

Q. Where was that? Could you point out on the chart here your location at the time?

A. Yes, approximately.

Mr. Fulton: I would like to have the big chart, Mr. Bowerman.

The Court: Why don't you go down to the table? That is best.

Mr. Fulton: Just a moment. Are you willing to admit this thing as an exhibit?

Mr. Wood: Yes.

(Testimony of Charles Wuori.)

(The map so offered, designated "United States-West Coast Oregon-Washington. Columbia [15] River to Destruction Island. Soundings in Fathoms at Mean Lower Low Water," was thereupon marked Libelants' Exhibit 1.)

Mr. Fulton: Q. Referring now, Mr. Wuori, to Libelants' Exhibit No. 1, which is a chart of a certain area of the Pacific Ocean off the Washington Coast, just explain generally what this is, this chart or this exhibit.

A. Well, this one is offshore chart. All the soundings are in fathoms.

Q. Explain it. Where was your position at the time that you undertook the tow?

A. Well, our position was approximately there (indicating). I could not tell just exactly, but we have thirty-five fathoms or more water before we start to tow. I wasn't quite sure how far we were offshore without throwing the lead overboard.

Q. In other words, at this place that has been marked by a cross there is what you estimate the position of the Melody at the time you undertook the tow? A. Yes.

Q. And found it. All right. Now where is that?

A. It is about ten miles off from North Head, and ten miles off from North Whistler.

Mr. Bowerman: That is a buoy, isn't it?

A. Yes, sir.

Mr. Bowerman: Whistler buoy? [16]

(Testimony of Charles Wuori.)

A. Yes, sir.

Mr. Fulton: Q. Now, what was the condition of the tide at that time?

A. Just about a half ebb northwest started.

Q. How does the tide set?

A. The tide was set at the summertime westward.

Q. Westward? A. Yes.

Q. That is offshore?

A. Offshore north.

Mr. Bowerman: Has this been offered and received?

The Court: Admitted as Exhibit 1.

Mr. Bowerman: It has been offered and received?

Mr. Fulton: Yes, Mr. Bowerman.

Q. All right. Now proceed with the tow. As I understand it, you had the Melody under it. What was your position? Where was your towline made fast?

A. Made fast around the rudder stock.

Q. That is astern of the vessel?

A. Astern of the tug.

Q. All right. We will have Armand explain that. Now when you started the tow how was the Melody lying with reference to being submerged, or sunken condition, or what?

A. I think it was at least 45-degree angle listing on the portside. [17]

Q. To the portside?

A. Port or starboard, but I can't remember any

(Testimony of Charles Wuori.)

more which side it was. No; it was on the starboard side.

Q. In other words, it was listing to starboard approximately 45 degrees? A. Yes.

Q. And how was the bow—what position?

A. Well, we didn't see the bow. It was underneath the water.

Q. But you could see enough contour to make an estimate—to make an estimate of what sort of angle was downward?

A. Yes. The top of the pilothouse was below the water and during the war the U. S. Coast Guard required the name of the vessel painted under the top of the pilothouse so the airplanes could not spot us.

Q. All right. Then you undertook your tow. What happened to the position of the vessel as to its listing after you started to tow?

A. It straightened sideways.

Q. In other words——

A. She came back some.

Q. She came back? A. Yes, some.

Q. Did the bow raise any?

A. I could not say. I could not tell, but it seems to me the bow came up, too, some, but the stern came up quite a bit when [18] we started to towing.

Q. The stern came up? A. Yes.

Q. What is your opinion as to whether or not the vessel had settled any lower in the water from

(Testimony of Charles Wuori.)

the time you first saw her and you undertook your tow? What is your impression?

A. Well, I was afraid it would sink down before we got the line on. That is why I told Frank Hoglund we could not keep a receiver on any more, "I have got to get busy and get the line on before she is down entirely."

Q. In your opinion did she settle further in the water before you did that?

A. In my opinion it did.

Q. When you started the towing, Mr. Wuori, what course did you pursue or take? Did you set a course for any particular place?

A. Yes. I took—after that time I took the sounding and I set the course to North Whistler, mouth of Columbia, but the tide was setting us off continuously, and offshore, so after she had towed maybe three hours or so I changed the course, and then shortly afterwards I saw that light from North Whistler, and also the light from the lightship, but I can't remember now without taking the course out again to decide what course we were steering.

Q. You set a short course for what you thought was Whistler? [19] A. Yes.

Q. Please indicate on this chart here.

A. How.

Q. Would you please indicate on the chart here what course you attempted to set?

A. I have to have a ruler now.

Q. Mark it.

(Testimony of Charles Wuori.)

(Witness marks, with ruler, on Libelants' Exhibit 1.)

A. Oh, east southeast approximately.

Q. The course that you set was east southeast?

A. East southeast, yes.

Q. All right. Now indicate——

A. But later on we changed the course, but I could not tell just how much we were drifted. I think the time before we got the line on, I think we might have been here (indicating on Libelants' Exhibit 1.) I could not tell you exactly. And the tide was setting out, so we drifted out maybe a bigger circle than this one.

Q. All right. Take this pencil here and make a circle around this Whistler that you were setting your course for—Whistler buoy.

A. This one here (indicating).

Q. O. K. Now, you take your seat. That is not a circle. Now, Mr. Wuori, what was the next thing that happened? [20]

A. After we got the towline made fast Armand went down below, and the reason, in the wheelhouse they took the wheel and then I made another telephone call to the Coast Guard, and also at the C.R.P. cannery and they told me the crew was picked up but they didn't tell me how they were picked up.

Q. Did you at any time request assistance from the Coast Guard to help you with the tow?

A. Well, when I make the first call I asked the Coast Guard to send two boats out so we could get

(Testimony of Charles Wuori.)

that Melody in before she sinks entirely, and when they did arrive there they asked me what I wanted them to do, so I told them they could put the lines down and the sooner the better.

Q. What time did they arrive, or did they arrive? A. They did, yes.

Q. The Coast Guard? A. Yes.

Q. Approximately what time did they arrive? How long had you been under tow?

A. It seems to me we were towing her somewhere around two hours, more or less.

Q. And then the Coast Guard boats turned up?

A. Yes.

Q. Just explain to the Judge the type of vessels they were.

A. Well, the old Coast Guard type vessels. I think they are somewhere around forty feet long or so, but they are orphan [21] boats, surf breakers; that is, they go through the breakers. They don't sink.

Q. They are meant purely for lifesavers?

A. Yes, lifesaving boats.

Q. Are those the boats you refer to in the libel as surfboats?

A. Yes. A surfboat is a little bit different type of boat. It hasn't got no power. They might have but I haven't seen them.

Q. We refer to them as surfboats in the libel here. A. Yes.

Q. All right. What was the other type of boat that showed up?

(Testimony of Charles Wuori.)

A. Then there was a later type of boat. I don't know how old it is, maybe six or seven years old or so. It is powered with a Diesel engine; I don't know the horsepower; and it is approximately fifty feet long, but it has considerable more power than these gas boats—gasoline boats.

Q. All right. Which arrived first, the so-called single boat or open boat, or the heavier newer vessel?

A. The little one, surfboat or livesaving boat, came.

Q. What happened then?

A. Well, they started to put the line on the boat before that, and inquire about it of me, what I wanted them to do.

Q. All right. And they put the line on?

A. Yes.

Q. Then what happened? [22]

A. Well, when they got the line on they started towing.

Q. During the time they put the line on did you take the towing easy?

A. Yes. We slacked off once and they told us to keep all the strain on, what we possibly can, so they can work better. The Melody stayed more in the level, and I guess they were afraid it might sink if it slacked off.

Q. Then I understand another boat showed up?

A. Yes, shortly afterward the Triumph.

Q. The Triumph?

A. Triumph, or something like that—I don't

(Testimony of Charles Wuori.)

know how to pronounce that name—arrived, which was followed by the Diesel engine. It is about a 50-footer.

Q. I think we have alleged in here what that is. (Mr. Fulton refers to complaint.) Well, anyhow, that boat, the Triumph, made fast its line, and I assume then the three of you continued with the tug? A. Yes.

Q. Without ever stopping it, but the tow, the Melody was kept under way all the time in tow until you got back? A. Yes.

Q. Then what was the next thing that happened?

A. Well, there was three lifesaving boats for a fact, and I don't know when that Fort Canby boat arrived but there was two of them little ones standing by. [23]

Q. The other Coast Guard boat just stood by; is that right? A. Yes.

Q. Now, all this took place while you were in the ocean? A. Yes.

Q. That was before you changed your course to go into the Columbia? A. Yes.

Q. Just explain to the Judge what was done, when you changed your course out there, and so forth, and came into the Columbia?

A. Well, after we were just about abreast the jetties, perhaps a little bit in——

Q. Now wait a minute. You haven't got out there yet. You are out at sea. A. Yes.

Q. What course were you pursuing then? Were you still on that same course?

(Testimony of Charles Wuori.)

A. Well, shortly after the jetty light we saw the lights. All the lights were visible.

Q. Yes.

A. And so we don't give any attention to our courses or compass. We were steering by the lights —one light.

Q. I am thinking now about the Whistler buoy. When you got off the Whistler buoy, how far was that off of north jetty?

A. I don't know without measuring it.

Q. Just measure it and say about how far it was. That was where [24] you changed the course to come in the river, wasn't it?

A. Yes. (Witness measures on Libelants' Exhibit 1.)

Q. Well, I will get the other map. I will change my question. Get it off of North Head then—off of North Head. How far was Whistler off North Head?

A. About five and a half miles, approximately.

Q. About five miles. When you got to the Whistler buoy what did you do? In the approximate vicinity of the Whistler buoy what did you do with reference to coming into Columbia River?

A. Well, I can't remember we done anything. There were several ships coming in and out.

The Court: You might tell me, Mr. Fulton, what speed his boat ordinarily makes.

Mr. Fulton: Pardon?

The Court: What speed his boat ordinarily

(Testimony of Charles Wuori.)

makes without a tow, and what speed he was making with a tow?

Mr. Fulton: Very well. Did you hear the question the Judge asked you?

The Witness: Yes.

Mr. Fulton: Answer that.

A. Well, without the tow in the calm weather I have made a little over ten, what we consider nine and a half miles, nautical miles, but what speed we had when we had the tow on I could not tell. Tide and current was against us.

Q. All right. At some point when you got out there there was [25] a change of course to come into the Columbia River, wasn't there?

A. Yes, sir.

Q. You don't recall what that position was at the present time? A. No.

Q. Was it dark then?

A. Oh, yes; a way after daylight. I think the sunset was somewhere around, oh, maybe nine o'clock or so.

Q. It was after that—dark? A. Yes.

Q. You were operating then by the dimmer light? A. By the light, yes.

Q. All right. Then tell what happened?

A. When we got about abreast of the jetties some place, then I talked through the telephone.

Q. The west or east end of the jetties?

A. Well, just about abreast of the jetties.

Q. I mean, the west end of the jetty, at the sea end of the jetty or the shore end?

Mr. Wuori: Charles Wuori.

A. Yes, yes; the outside end.

Q. The outside end? A. Yes.

Q. The west end? A. The west end, yes.

Q. Of both jetties? [26]

A. Just about the same length.

Q. You were on a line running from about the north jetty to the south jetty?

A. Yes, just about.

Q. What happened then?

A. We had quite long tow lines out and there are quite a few navigation aids in the channel.

Q. How long was your towline?

A. Well, I could not tell exactly but it seems to me we had about a hundred fathoms.

Q. One hundred fathoms? A. Yes.

Q. O. K. Then what happened?

A. I talked through the telephone to the skipper on the Triumph and I told him about it, "We have got to shorten our tow lines when we get in the channel or else we get fouled."

Q. What navigation aids were there?

A. Yes; so many buoys and channels, and mine zoning was still there, too. So then we started to shortening our towlines. The Triumph went from starboard to port. We were still going ahead continuously running.

Q. Where were you at that time? Were you in the pilothouse? A. I was in the pilothouse.

Q. Were you at the wheel?

A. I can't remember where I was. Yes, I was on the wheel. [27] I was alone there at the time

(Testimony of Charles Wuori.)

when I made the telephone call. The boys were asleep.

Q. And from the time you made the telephone call to the Triumph on the question that the tow-lines be shortened—— A. Yes.

Q. ——up until the time you were going to remain there about the fouling of your wheel, had you in any manner changed your vessel's course?

A. No.

Q. Or did you stay on the same course?

A. Stayed on the same course.

Q. Go ahead and tell the Judge what you meant by the Triumph going from starboard to port.

A. When we were shortening our tow line the Triumph went from starboard to portside until that time one of the boats was on the port and the other one on the starboard and the Triumph was on the right-hand side of——

Q. Of you? A. Yes, of the Stampede.

Q. Your boat was in the middle?

A. The middle, yes. Then she went from right to left. The towline fouled in our propeller.

Q. What happened then?

A. Well, we cut the towline—well, I have got to explain a little bit more. I think we cut the foul on the Triumph's [28] towline, oh, about twenty-five to forty fathoms from the Melody. Then we cut the line off between the Stampede and Triumph first, and then cut the line which was between the Melody and the Stampede and han-

(Testimony of Charles Wuori.)

dled that in back to Triumph again. There was still two boats towing the Melody.

Q. What was the condition of the tide at that time?

A. The tide was flooding, coming in, coming in the Columbia, and after the Triumph got the towline fixed again, then called up that boy on Disappointment, Cape Disappointment Life Boat, and they give us a towline while I went down in the engine room to clear the wheel. The engine was running continuously. That is on the Stampede.

Q. Did you succeed in clearing the wheel?

A. Not exactly all, but the wheel was clear. That is, I was able to throw the clutch on and off, but I was a little bit afraid if I had to keep the wheel on it might burn the bearings off, the stern bearings off.

Q. What was your intention if it became necessary to resume the tow?

A. Well, to use the wheel as if nothing had happened.

Q. Yes. What did your subsequent investigation of the conditions show—it would have injured the wheel or it would be safe to continue the tow?

A. It would be safe. You mean after you reach the tow?

Q. Yes. It would have been all right if you had? [29] A. Yes.

Q. It would not have hurt your boat?

A. No.

(Testimony of Charles Wuori.)

Q. It would have operated as it did before?

A. Yes.

Q. All right. Then what?

A. Well, we never did run on our own power after we got inside. The Coast Guard boat took us in then and we arrived there about the same time; maybe we got a little bit ahead of the Melody.

Q. Did you stand by with your vessel?

A. Until we were at No. 14, I guess, channel buoy.

Q. Everything was progressing satisfactorily with the tow? A. Yes.

Q. Then you stood by the tow until it got into, you say, No. 4? A. 14.

Q. 14; and everything was absolutely safe with the tow? A. Yes. We were entirely inside.

Q. Yes. All danger was passed?

A. Yes. We were inside at the first place when we fouled our wheel.

Q. State the facts as to whether, after you got the tow into the Columbia River to a point that your wheel was foul, about all that was necessary was to keep a slight astern?

A. Yes. The tide was carrying it in, yes. [30]

Q. Then what happened after that? After you got in where did you go?

A. We beached the boat and at the time before we beached it, shortly after we fouled our wheel I took the Triumph again and I asked what is his opinion about it, beaching the boat at the Point

(Testimony of Charles Wuori.)
Adams, which is the same locality where the life-saving station is located and the lifeboats.

Q. Right out in front of you?

A. Yes. And he said, "The beach is pretty good there." I told him, "We have got to beach both of them, the Melody and the Stampede," in order to get satisfaction. There were some knots left in the wheel. We had to beach the Stampede, too.

Q. O. K. And you beached both of them?

A. Yes.

Q. In your opinion what was the time that your wheel became fouled approximately?

A. I can't remember.

Q. You can't tell? A. No.

Q. How long after your wheel was fouled did you release the tow? Was the Melody beached at the Coast Guard station? How long an interval of time elapsed in that; a couple of hours?

A. No, I don't think so. Less than an hour, it seems to me, but I could not tell.

Q. Less than an hour? [31]

A. Yes, sir; but I am not sure of that.

Q. All right, Mr. Wuori. Then what happened? Then what did you do after that?

A. There was nothing we could do that night, until next morning.

Q. Then what did you do next morning?

A. Next morning I went over to the Coast Guard station again and inquired about if they got any gasoline or power pumps.

(Testimony of Charles Wuori.)

Q. All right. What time of the morning was that? A. That was right after daylight.

Q. Right after daylight?

A. I think about five o'clock or so.

Q. What did they tell you?

A. They say they have.

Q. All right. What did you do?

A. Well, I asked him about if they going to let us use their pump to get that Melody pump out. Oh, it was—I don't know just what time it was; maybe six o'clock or so; but the water was low enough to get on board the Melody with the hip boots on. Maybe it was later. I wouldn't know. But anyhow that worked. We got the pumps and the hoses and everything ready there right at the water's edge, so at the time when we were able to start pumping we stretched the hoses in the hold, I mean in the forecastle, and pumped her out.

Q. You say "we." Who do you mean by "we"?

A. The whole crew of the Stampede, and there was, I don't know how many Coast Guard members there was; maybe five or six.

Q. How long did you work on it?

A. I don't know. If you start to considering from daylight when you got off of the Stampede, then by the time when it was pumped out, I don't know just how long it was. We never keep track of the time, just so the work is done.

Q. Well, was it ten minutes or fifteen minutes?

A. No. It took—it seems to me it took four or five hours.

(Testimony of Charles Wuori.)

Q. All right. And you finally got the water out of it? A. Yes.

Q. Then what did you do? What did you do then with reference to the Melody? What was done next with reference to the Melody? The tide came in?

A. Well, when the tide came in I asked the Coast Guard to tow her in, which they did.

Q. Where?

A. They towed us in at the C.R.P. cannery, the company where I have been fishing for a number of years.

Q. Were there any fish aboard the Melody?

A. Yes, there was some. I thought there might have been, oh, eight or nine thousand, but I would not know how much there was. There were several pens still full, and then some pens had fallen off and the fish were found in the middle of the boat out from the pens. [33]

Q. Mr. Wuori, in the answer of the defendants —the respondents—they state they started to fishing on the 22nd, that is two days before you found her. Now taking into consideration the bent on the tuna fishing benches, what in your opinion amount of ice did they have in their hold?

A. When you say tuna fishing with a lifeboat, my boat is only twenty-one tons and the Melody is twenty-five. We take, oh, around five or six tons of ice with us every trip when I went out.

Q. For that size of boat five or six tons is the normal amount of ice to carry?

(Testimony of Charles Wuori.)

A. Yes, that is what I think.

Q. After two days at sea, though—they went on the 22nd—how much ice would they have?

A. Well, if they took six tons I don't know how heavy the ice was but it always melts more or less.

Q. How much would they have left in there, though?

A. I could not say.

Q. What is your judgment as to how much they would have?

A. First, I have to know how much fish they had and how long they aimed to stay out, and so forth. You have got to take all those things into consideration.

Q. All right. Just your estimate.

Mr. Wood: If. your Honor please, when the witness has said from the conditions he can't state it and can't estimate [34] without knowing those factors, I don't think counsel can press him further. He says he doesn't know and can't even estimate.

The Court: All right.

Mr. Fulton: He gave me a figure here of four tons when I drew this libel.

The Witness: They must have had—well, in the first place, if you know how much ice they took, I suppose they took five tons and they were out a second day and had some fish, evidently they had used a thousand pounds out of it.

Q. Well, they admit the value of the fish was around $1400. Would that mean anything to you?

(Testimony of Charles Wuori.)

A. Yes, one way or another. I don't know if they got the full price.

Q. Yes, they got the full price.

A. If they were No. 1 fish or No. 2, and so forth, well, the tuna amounted to $400 a ton at that time.

Q. Approximately?

A. Yes; so they might use a thousand pounds of ice.

Q. Then in your opinion how much ice would they normally have in the hold?

The Court: I will subtract one from five.

Mr. Fulton: All right.

Q. Now getting back to the Melody, after you pumped out did you make an examination of her?

A. Outside? [35]

Q. And inside. A. Yes, I did.

Q. What was the condition of the Melody, so far as damage was concerned?

A. I could not see any damage on it whatsoever. All the woodwork and finish was just like new when the boat came out of the shipyard, except one panel off an inside door was broken.

Q. Did you happen to chance to observe the tanks as to how much oil she might have been carrying? A. No.

Q. Fuel oil?

A. I haven't an idea, but a tank of that size would carry at least a thousand gallons.

Q. A thousand gallons? A. At the least.

Q. And speaking of the voyage of this boat,

(Testimony of Charles Wuori.)

what, in your opinion, was holding her up? What is your best judgment?

A. From my opinion, it was ice and oil and air, what might have been in the pockets here and there.

Q. It is your opinion she would have sunk very quickly. A. Yes.

Q. It is? A. Yes.

Q. All right. After you made this examination what in your opinion is the value of that vessel?

A. Well, I don't know.

Q. What in your opinion was the value of the vessel before the accident and the value after?

A. Well, the new boats at that time of that size cost somewhere around thirty-five thousand dollars, new boats.

Q. This was a new boat, was it?

A. Yes, it seems to me brand new, but afterwards I found out it was her maiden voyage.

Q. Her maiden voyage? A. Yes.

Q. And what was she worth after that? Give the figure and explain.

A. Well, I don't know just exactly what had to be done but in general overhauling I think it cost about a thousand dollars most. I would allow about three thousand dollars to put her in the same shape as it was before she sailed out; that is, not any improvements made but in the same shape as it was.

Q. Now you are taking into consideration her electrical equipment, radio, telephone?

(Testimony of Charles Wuori.)

A. Yes.

Q. Direction finders? A. Yes.

Q. She had that equipment, of course?

A. I think she had Intervox 2-way radio.

Q. Didn't have direction finders? [37]

A. It is a combination, if I am not badly mistaken.

Q. Well, could that get sea water in it, or do you know? A. I don't know.

Q. In your opinion what is one of those worth?

A. If it was 25 watt set I think they sell somewhere around between six hundred and seven hundred dollars.

Q. New?

A. Yes. But if it was higher voltage, then the price would have raised, too.

Q. All right. Now, Mr. Wuori, I would like to have you pursue another subject here. Now that is as to hazards and dangers in connection with that tow——

The Court: I guess we will stop now and resume at two o'clock, Mr. Fulton.

(Thereupon, at 11:59 o'clock A.M., a recess was taken until 2:00 o'clock P.M. of this day, Monday, October 29, 1945, at which time court reconvened and the following further proceedings were had:)

CHARLES WUORI,

one of the libelants, resumed the witness stand and further testified as follows:

Direct Examination (Continued)

Mr. Fulton: Your Honor, by agreement of counsel, we are introducing a chart of the mouth of the Columbia River showing [38] the jetties. I will ask that it be marked Libelants' Exhibit 2.

The Court: It may be marked an exhibit.

(The chart so offered, entitled "Columbia River Pacific Ocean to Harrington Point," etc., was thereupon marked Libelants' Exhibit 2.)

Mr. Fulton: Q. Now, Mr. Wuori, would you step down here, and I call your attention to Libelants' Exhibit No. 2, which is a chart of the mouth of the Columbia River, showing the north and south jetties, speaking of the fouling of the wheel of your vessel, the Stampede. I wish you would indicate on this chart where, in your opinion, was your position at the time this fouling took place. Please mark it with a pencil.

Mr. Bowerman: Would it be well to put a figure in the circle?

Mr. Fulton: What?

Mr. Bowerman: You have got a couple of circles there already.

Mr. Fulton: Not on this chart.

Mr. Bowerman: I see.

Mr. Fulton: I introduced a new chart, Mr. Bowerman, when you were gone.

Mr. Bowerman: O. K.

(Testimony of Charles Wuori.)

The Witness: Somewhere around that neighborhood. (Witness marks on chart.)

Mr. Fulton: Q. All right. Before taking up and discussing the hazards of the tow, there are a couple of other instances, Mr. Wuori, I want to straighten out here, at Mr. Bowerman's [39] suggestion. I would like to have you explain in detail, in your own way, how this fouling of your propellor took place. Just explain so the Court can understand it.

A. Well, after I had made the telephone conversation with the skipper on the Triumph and told him we had better shorten our towlines before we get in the inside channel—of course, there is not much distance in the places where we had to go through, especially, the channel was pretty narrow, so we slowed down and started to take in our towlines.

Q. All right. That is the part I want you to explain. Why did you take in your towlines, and what was the purpose of slowing down?

A. Well, we got mechanical winches.

Q. Power winches? A. Power winches.

Q. With reels in the line?

A. Yes. We have practically got two towlines, 300-fathom apiece, half-inch cables. When we are fishing we have got four of those cables on.

The Court: What kind of cables were they?

A. They are half-inch plow steel cables. But we had only one hooked on the Melody, one on the portside; that is on the left side of the vessel.

(Testimony of Charles Wuori.)

Mr. Fulton: May I ask a leading question here?

Q. Was it your purpose to slow down just sufficient, to a [40] speed sufficient to reel this line in without any particular pull on it? A. Yes.

Q. Was that the purpose? A. Yes.

Q. All right. Now where were you at the time?

A. I was at the wheel.

Q. Who was at the winches, if anybody?

A. John Kurtti was at the winches, and then once in a while I came out on the main deck, too. There wasn't anybody on the wheel at the times, but I got mechanical steering apparatus.

Q. Just explain that to the Court here, mechanical steering apparatus.

A. Well, it is mechanical steering apparatus. You set the course and it stay on the course any length of time without anybody being watching the wheel.

Q. Is it accurate? A. Yes.

Q. How does it compare with the manual operation?

A. It is more accurate than any human being can operate the wheel.

Q. After you started to pick up, or to reel in your line, your towline—— A. Yes.

Q. ——was there any change in your course?

A. No, there wasn't any.

Q. All right. Then what happened? Just explain what happened. Oh, well, pardon me. Just one more question. Prior to this time the Melody.

(Testimony of Charles Wuori.)

as I understand it, was being towed by three vessels? A. Yes.

Q. Just explain to the Court the position of those vessels, and the position of each, and how the tow was being made.

A. Well, the Stampede was in the middle, then the Triumph was on the right, and the smaller lifeboat was on the left-hand side, and we were——

Q. When you were in the river, or how?

A. Yes.

Q. Make it north or south, so we won't have any trouble.

The Court: Excuse me a minute. I have to answer a telephone call.

(A short pause was here had.)

Q. Mr. Wuori, when you were proceeding with the Melody into the river, approximately what direction were you going?

A. You mean in the river?

Q. Coming into it, yes.

A. In the river. Of course this without the tow is practically north northeast, if I am not mistaken, and when we got the tow on we got to take consideration the tide and the current. Whichever way it takes us we have got to correct our courses. [42] The course in the channel doesn't mean hardly anything, but it is easterly direction.

Q. I know, but simply for the purpose of explaining, it is fair to say you are running in generally an easterly direction coming in?

A. Yes, easterly.

(Testimony of Charles Wuori.)

Q. What vessel was on the north of you?

A. Well, what we call a surfboat vessel on our south, or north side.

Q. On your north side, and on the south side was the Triumph?

A. The Triumph was on the south side or starboard.

Q. Was your boat, the Stampede, advanced—have out a longer cable?

A. Yes, we had a longer cable leading.

Q. You set the course and they followed, did you? A. It followed us.

Q. That is the procedure you had perfected during that time from the beginning?

A. From the very beginning of it.

Q. Now explain what happened. You said you were shortening your towline? A. Yes.

Q. What is the next thing that developed?

A. At the time when we were shortening our towline the Triumph drifted from south to north side of us, and by doing so we got [43] her towline in our wheel. If we were alone nothing like that would have ever happened; we would have brought the boat in by ourselves alone; but I thought for the purpose we would save life and property, and that is why I required their aid.

Q. Anyway, that is what happened. It crossed your bow? A. Yes.

Q. Now what kind of a predicament did that put you in. Were you in any danger there?

A. Yes, on the way we were, and we had kind

(Testimony of Charles Wuori.)

of a hard time that night, especially in the pitch dark there. Well, first, what we done, we cut the towline which was between the Stampede and Triumph.

Mr. Fulton: Your Honor, can you hear him all right?

The Court: Yes.

A. And they took their line in; that is, what was left. We were approximately, I don't know just how long but I would say twenty-five to forty fathoms from the Melody at that time. Then we fished that line up.

Q. Then what did you do with it?

A. We had to take the spike pole and finally managed to get the bight of the line, of that towline. The spike pole——

The Court: I thought he was wrong about the spike a while ago. He said spike both times.

The Witness: Spike. Spike.

Mr. Fulton: Q. Then what happened? [44]

A. Then we cut that line close to our propeller and hang onto that line until the Triumph came close enough to us to throw the line back to them.

Q. Oh, I see. Then you bound those lines together? A. No. They did.

Q. They did?

A. Yes. Like I said, we had twenty-five to forty fathoms.

Q. What kind of lines were aboard the Triumph? A. I think it was four reams.

Q. Manila or steel?

(Testimony of Charles Wuori.)

A. Manila. Around four reams. That is, three times four is about twelve inch round.

Q. Now as I understand it, you cut the towline attached to the Triumph and——

A. Yes.

Q. ——you cut it between your vessel and the Triumph, and between your vessel and the tow or the Melody? A. Yes.

Q. Then you waited there, and the Triumph came up and they took both those ends?

A. They took the line which was between the Triumph and Melody in first in order to have a clear wheel so they were able to reverse and go ahead. If they hadn't done it they would foul their wheel, too.

Q. Then they went down to the Melody, which was cut off? [45] A. Yes.

Q. And then proceeded to tie them together?

A. Yes.

Q. Or, as you gentlemen call it, bind them?

A. Yes.

Q. Then what were you doing all of this time?

A. We were twisting in with the flotilla then, when they cut the line to clear up this standby surfboat.

Q. What was your position with reference to the tow then?

A. We were still east from it.

Q. You were in no particular danger of that, I take it?

A. No, not exactly, but it could have drifted

(Testimony of Charles Wuori.)

over on us. There is more or less always swells in a bar if they bump together, heavy drift like that, like the Melody, was waterlogged, or practically the same.

Q. It was a hazard?

A. Yes. And if it had happened before we were in the jetties there would be more danger, because even if a tide is flooding, but outside the jetties, it is still setting a northerly and westerly direction regardless of tide.

Q. And what position does that drift—what hazard does it create?

A. It would have drifted us on the Peacock Spit, or on the jetties at the north jetty.

Q. Then you had got out of the most hazardous grounds when this [46] happened?

A. Yes. Like I said, we were inside, and when you are inside the jetties then the tide is only going two directions, in or out, but once you get inside it always sets certain times of the year south 30 and north 30.

Q. All right. Now I want to ask you, was your wheel tight so it could not be turned?

A. After we cut the towline from that surfboat, then I went down in the engine room and worked on the clutch and I was able to turn the wheel.

Q. Freely?

A. That is, it was turning freely, yes.

Q. And why didn't you drive in the tow then?

A. Well, it is not good policy. When you have got your wheel fouled, in the first place, you don't

(Testimony of Charles Wuori.)

know what is taking place there. You haven't got a chance to see it. And we would have used on our own power if we were alone and there wasn't any reason in the world to try to get in when there was a third boat standing by without doing anything.

Q. In other words, you considered, in your opinion, it good seamanship to take the tow or stand by? A. Yes.

Q. Had you made up your mind that your assistance would be needed?

A. If it was needed we were able. [47]

Q. You were able?

A. Yes. Our engine was running continuously, but then we had to propel around.

Mr. Fulton: Did you have anything else, Mr. Bowerman, along that particular line? Your Honor, do you have any objections to the members of the crew sitting up here, so they can hear this, or is that a violation of the court rule?

The Court: No. Why do they need to hear it?

Mr. Fulton: I don't know that they do. They don't have to hear it, of course.

Mr. Wood: Why should they hear it at all?

Mr. Fulton: Q. Now getting back—I am going to clear up a couple of other things—getting back to the Melody at the time you arrived out there, Mr. Bowerman doesn't think you explained it quite sufficiently so that the Court got a true picture as to its position in the water and about the assertions that you made, the assertions of the crew,

(Testimony of Charles Wuori.)

as to visibility. I wish you would just generally tell the court about that.

A. The visibility was what we considered clear weather but more or less, if you get any distance from the land, it seems like there is a fog banner or haze hanging at the water's edge and a little bit higher up, so you can't just exactly tell where you are, and that is the reason I took the sounding the very first thing when we were ready to proceed with our towing.

Q. Now making your search it developed there, I understand, [48] that the crew of the Melody took off in the life raft. Did you see that life raft?

A. No.

Q. Did you make any effort to find it?

A. Well, we made circles; I think we made at least two circles looking for them. I was expecting to see the crew on the life preservers. I don't know how I got that in my mind, but when we didn't see anything there at all, and, like I said, it was clear weather; the visibility was fairly good; but life rafts and things like that when they don't float high, you can't see them very far—not miles, except if you happen to look in the direction when they are on top of the swells.

Q. In that connection, too, what would you estimate the height of those ground swells at that time?

A. I don't know. In my life I never estimated any swells at any time.

Q. You can't tell, huh?

A. No, except when we were coming over the

(Testimony of Charles Wuori.)

bar if they are too high on two sides then we turn back in. I don't attempt to cross.

Q. In other words, you are not able to estimate the height of the swell? A. No.

Q. But they were sufficient you feel to hide this life raft from you? [49] A. Oh, yes.

Q. For a couple of miles? A. Yes.

Q. Now tell how the Melody was lying in the water, in detail.

A. Well, when we made the circles, when we were looking around for survivors, and we looked around for any boats or any vessel visible in the horizon, but there wasn't I think a vessel in the whole horizon in that clear weather, and the Melody was laying, I think it was with at least a 45-degree list on her starboard side and the bow, the forward part or front part of the boat was entirely under the water and just by the top of the pilothouse.

Q. That would be the portside of the pilothouse?

A. Yes.

Q. How much of the portside of the pilothouse was visible?

A. The canvas was all on top of the water.

Q. Just explain that now, the canvas. That is on top of the pilothouse?

A. On the top of the pilothouse.

Q. Explain that to the Judge, just what that canvas is you have reference to.

A. Ordinarily they put the canvas on top of the

(Testimony of Charles Wuori.)

pilothouse not to permit water getting in. That is the roof—roofing.

Q. That is the roof? A. Yes. [50]

Q. That was out of water?

A. That was all out of water.

Q. On the whole top of the pilothouse?

A. I think it was whole top of the pilothouse.

Q. How high would the highest point of the pilothouse be out of water?

A. From the main deck I think it was somewhere around seven—about seven and a half feet, I think.

Q. Seven and a half feet?

A. From the main deck.

Q. To the pilothouse?

A. On the top of the pilothouse, yes.

Q. Was that all above water?

A. The very top, just so that the canvas was visible. The roof was visible.

Q. What was the top deck? Any of that above water?

A. There wasn't anything on top of the water, like I said, except the top of the pilothouse and a part of the bait tanks.

Q. How much of the bait tanks was above water? What proportion? Then I will ask you the size of them.

A. It seems to me that the forward bait tank. I can't just remember about that. On the one side it might have been one-fourth or less.

Q. What is the approximate size of the bait

(Testimony of Charles Wuori.)

tanks, to give the Court an idea, and where they are located? [51]

A. Well, first, from the pilothouse it is always hatch cargo, where you put your fish cargo on ice; then next to the hatch is the bait tank, or tanks. If I am not mistaken this particular Melody had two bait tanks on it.

Q. The approximate size of them?

A. I think they were somewhere around eight feet in their width I didn't measure them.

Q. I know, but just give the general size.

A. No. About eight feet in width, and it seems to me they were higher than ordinary tanks. I think they were about four feet higher.

Q. How long?

A. Between five and six feet, I guess.

Q. They had two of them? A. Yes.

Q. Were they lengthwise of the hull or crossways of the hull, the two of them?

A. Well, eight feet—eight feet wide. That means across the forward.

Q. Across the forward? A. Yes.

Q. All right. How much space was left of the Melody at the bait tanks and the bulwarks?

A. I can't remember that. I can't remember even if the aft bait tank was aft of the poop tank or all were on the main [52] tank.

Q. Anyhow, a part of the aft bait tank was above water? A. The upper part.

Q. The upper part?

A. Yes; and on the portside more.

(Testimony of Charles Wuori.)

Q. Excuse me just a minute. Was there any part of the deck that wasn't afloat with water?

A. There was a little part of the poop deck afloat; very little; I should say about two or three feet fore and aft, and maybe a little bit longer crossways.

Q. Did this vessel have a cabin besides the pilothouse? Did it have any cabin on it besides the pilothouse?

A. No. It is all interior. The forecastle and the sleeping quarters were in the forward part under the main deck.

Q. Was there any cabin after the pilothouse?

A. Visible?

Q. No. On the boat as constructed was there a cabin after the pilothouse?

A. Well, we considered that whole housing as a pilothouse. There is galleys, and so forth, built on it.

Q. I know, but——

A. No. It is the only house on it.

Q. Just one house?

A. One house, yes.

Q. That is the pilothouse? A. Yes. [53]

Q. Was the whole house built up the same height as the pilothouse? A. Yes.

Q. All the way along? A. Yes.

Q. Naturally the bilge and the hold of the ship and everything was full of water?

A. Yes. There was only a small portion of the poop deck. The poop deck, I don't know how

(Testimony of Charles Wuori.)

long and how high it is on this particular vessel, but ordinarily they are about a foot from the main deck higher. That was also under water, except the small portion between the swells which came up once in a while and it seems to me that the swells went over.

Q. All right. We have got that. Now we are getting back to the Melody. I think you think I didn't ask you what the value of the Melody was prior to this accident. What in your opinion was the value of the Melody prior to the accident?

A. Including all equipment, what she had on it?

Q. Well, you divide it any way you want to.

A. I should say the valuation, including all the equipments she had on, was somewhere around thirty-nine thousands.

Q. All right. Segregate these values.

A. The hulls, it is around thirty-five; then the bait tanks, pumps and the nets. From my own experience, from the time I had them things on it cost me pretty close to four thousand [54] dollars, between three and four thousands.

Q. Then you say prior to this accident she was worth in the neighborhood of thirty-nine thousand dollars, with equipment as she was?

A. With her equipment, yes.

Q. What in your opinion was the value of the vessel afterwards?

A. Well, three thousand dollars less.

Q. You think it was worth three thousand dollars less. Oh, yes, one other thing. Did at any

(Testimony of Charles Wuori.)

time any members of the Melody crew, or its skipper, offer you any assistance even after you had beached the vessel?

A. Not at any time.

Q. Did they make an offer of assistance, or did they lend assistance to help you get the water out of the hold, or to close it? A. No.

Q. Now just on the question of fish, what examination did you make of the fish and what did you do toward preserving them and preserving all equipment about the boat?

A. Well, we took—we pumped the water out of it, the first thing, and when it floated we asked the Coast Guard to get it in and get all fish out of the hold as soon as possible, and while we were unloading there in the cannery, before all of the fish were off, then the skipper came along and he took the boat. I don't know where he took it. [55]

Q. I don't mean that, but didn't you make some investigation before you moved the vessels off the sands for disposing of the fish, to get them disposed of before they spoiled? Tell the Judge about that. I have reference to Point Adams.

A. Yes. When we pumped the boat out first, I think first, we thought it was the best way to get the fish out of there as soon as possible before we were able to float the boat, so I sent two of my crew members over to Point Adams to get a big skiff, seining skiff.

Q. Where?

A. Point Adams. It is only a short distance; I should say about a quarter of a mile, or less.

(Testimony of Charles Wuori.)

Q. Quarter of a mile?

A. Or less from the place where we beached the boat. So the boys went over to work on that skiff, but in the meantime I think it is useless work. It is only a matter of a few hours before it will refloat the whole thing, and I thought it takes pretty near just as long for us to get fish out of the hold, if we start to unloading there, as it would have taken for the time we started floating it.

Q. It would take more handling?

A. Yes, and more handling of the fish. It is no good for fish to be handled so many times; especially I was afraid the fish might be soft already, when they have been in the water so long.

Q. Then did you make any effort to do anything about preserving [56] machinery, or equipment, or anything else?

A. Well, I called up Astoria to see if they had a machinist, and this particular company that handles the make of engine the Melody had in it, in the case if they don't show up at all; that is, the skipper of the Melody; and they were ready there waiting for us.

Q. That is, the mechanics? A. Yes.

Q. Was it necessary in your opinion to immediately do work on the engine? A. Yes.

Q. Just explain to the Court why.

A. Well, the sooner you get to work and the salt water out of the machinery and batteries, more or less, the better, since the things have to spoil, and the salt water should be taken out right away

(Testimony of Charles Wuori.)
and then washed out. The same thing for machinery. If it stay in salt water any length of time it forms the rust and spoils.

Q. In other words, did you, in your opinion, take every precaution to preserve this property, and fish, and cargo, and equipment? A. I did.

Q. What about these nets and the lines, and so forth? What did you save of the nets?

A. Well, I didn't do anything like that. The time we got the [57] fish unloaded, then we can take the net out and wash the net and try them out.

Q. But the net was saved?

A. The net was saved.

Q. Was the bait tank saved? A. Yes.

Q. Was any equipment lost, that you know of?

A. I don't think so. I don't think any equipment was lost. Some dishes might have been broken.

Q. Dishes? A. Yes.

Q. And one panel of the door. Now, Mr. Wuori, I would like to have you explain to the Court the hazard to both life, your vessel and to your crew, in undertaking the salvage and the tow of that vessel from the position where you found her into the Columbia River, where she was ultimately beached and saved. Just in your own words start right from the first. Tell the first that happened to her, about Mr. Syvanen boarding the vessel, fouling your wheel on the net.

A. Well, in the first place, when you go into a

(Testimony of Charles Wuori.)

submersible, oh, like the Melody was, you don't know what is floating and what is not floating, and any time you go close to those things you might get your net fouled.

Q. Your wheel?

A. Yes, your wheel fouled. Then you might be bumping into [58] each other until you are in the same shape as the one which you try to salvage. And then, boarding on the Melody, I know for myself I would not have boarded her, on the Melody.

Q. Why not?

A. Well, there is always a tendency to get hurt boarding such a thing as that, when the seas are always rolling. It is a different thing if you can board such a thing in the bay in the calm water. But Armand voluntarily offered to go there, so I didn't have any objections to that.

Q. You discussed the hazards with him?

A. Yes.

Q. Now while he was out there was he visible to you all the time? A. No.

Q. What caused you to lose sight of him?

A. Well, every time when he tried to—there is a cockpit with its opening in the stern of the boat. I don't know how—maybe it is two feet in the width and, oh, maybe in the lengthways eight; maybe two feet crossways and eight feet lengthways. At least two-thirds or more were in the water.

Q. Under the water?

A. Underneath the water. There was only a

(Testimony of Charles Wuori.)

small opening on the one side, and then when he was trying to get the line around the rudder stock, which was entirely in the water, he had to get on it way down, so I was afraid if the boat sinks [59] the time when he is underneath he will go down with it and get tangled up or something. You never know what is there when you don't see it. There might have been lines or something he could foul himself, and so forth.

Q. That is a real hazard?

A. Well, from my opinion, yes.

Q. Was there any particular hazard if you had fouled your wheel out there, or something, and the boat, the Melody, had sunk when you first undertook the tow when you were there all alone, was there a hazard about that?

A. No. No, not exactly, until we got in the channel when we got our wheel fouled. We were not in trouble until we got in the middle of the Columbia River, where we fouled our wheel.

Q. All right. After you undertook the tow and had the Melody under way, where was the next position of the tow that you were presented with a hazard? In other words, when you were towing along there out in the ocean, you say there wasn't any particular hazard?

A. No, no, there wasn't.

Q. Where was the next hazard as to life and as to danger to your vessel, danger to your lives, and so forth?

(Testimony of Charles Wuori.)

A. Once we got in the channel, the channel is a place that is so narrow.

Q. Can you point out on either exhibit, Libelants' Exhibit 1 or 2, those positions of hazards, and explain to the Court. [60] Will you do that?

A. Even if we didn't get our line fouled up when we were towing a sunken object like that, we don't always have the steerage. You see, the current and the tide set us off, more or less, and especially at the night, and there is quite a sharp turning point where the mine zoning is.

Q. Explain that. What do you mean by mines?

A. Well, through the mines there was a mining zone laid across the channel there.

Q. Do you know where they were?

A. Yes. They were a little above Number 14.

Q. Were you careful? Did those present a danger, do you think? A. Yes.

Q. Have you been so advised by the Government? Had you been advised by the Government?

A. Well, any man who has been running in the river would see them floating first. I don't know how heavy they are but they are still quite heavy and no lights of any kinds on them. If you hit one of them with wooden built hulls, I think it runs holes right through, and no lights on them.

Q. No lights on them?

A. No lights on them.

Q. How was this, a moonlight night, or dark, or how was it?

(Testimony of Charles Wuori.)

A. I can't recall, but it was a clear night. Lights were visible. It was fairly good. [61]

Q. Over approximately what area there were these mines located that presented a particular hazard?

A. Through Number 14, and they are laid out in this position (indicating).

Q. Would you mind pointing to Libelants' Exhibit 2? Take a pencil and indicate by drawing a line the mine field that presented a hazard to you and your tow. When I say you, I mean your vessel and your crew and yourself.

A. Something like this; if I am not badly mistaken, they are something like this postion here. I am not quite certain but approximately somewhere around this.

Q. Now wait a minute. Are you getting that? I know the Judge is not getting it. All right, Mr. Wuori, you are indicating here with a series of x's on Libelants' Exhibit No. 2, where, in your opinion, this mine field is located?

Mr. Wood: I object to that question. What he said was, he is not sure about it; he is not at all sure about it. The best he can estimate it, it is there, but he doesn't know.

A. Yes, but we have got to go through this mine zone before we get on this side.

Mr. Wood: I heard you say you could not mark it very accurately, where it is; you just think it is somewhere around there.

(Testimony of Charles Wuori.)

Mr. Fulton: Well, that is all right. That is all of that.

The Witness: Yes, right there. [62]

Q. That is approximately it, is it?

A. Yes.

Q. How far is Buoy 14 from a line drawn——

A. 14 is in the turning point. That is, we sent our boys over there when we entered the river.

Q. Will you please indicate 14, then.

Mr. Wood: It is already marked 14 on the chart.

Mr. Fulton: I know, but we want it here marked and 14 right alongside of it with big figures so you can see the thing.

(Witness marks on Exhibit.)

A. This is Number 14.

Q. You have got only 4 here.

A. That is Number 14. Then you run five minutes full speed east by north from Number 14. Then you come into this bank and then shortly after you have passed this bank the mine zone is located, so it can't be very far out.

Q. O.K. How far is it from the mine to a line drawn at the west end of this?

A. I never measured it.

Q. Can you measure it here now? Can you tell with this? Are you familiar with this map?

A. Nautical miles—thirteen miles. (Witness figuring with map.) Three and three-quarter miles.

Q. Three and three-quarters miles?

(Testimony of Charles Wuori.)

A. Three and three-quarter, or three and a half, something like [63] that.

Q. Mr. Bowerman calls my attention to the fact that you said you called for arrangements for a machinist and mechanics to be up there to take care of the engine? A. Yes.

Q. Who was that, do you know?

A. It is Atlas Imperial Engine Company.

Q. Mr. Walker, was it?

A. Mr. Walker. I cannot remember his first name. They handle also this—I think it was Mack —Mack Diesel engines.

Q. Was it a Mack Diesel engine in Mr. Rustad's boat? A. If I am not mistaken it was.

Q. In any event, Mr. Walker was the agent for that engine? A. Yes, he was.

Q. And he was at the dock ready for you when you got there? A. Yes.

Q. And the only reason he didn't go to work was because the captain would not let him; is that right?

A. Yes.

Q. Captain Rustad would not let him. In your opinion would it have been the proper practice to have immediately went to work on those engines?

A. Yes.

Mr. Fulton: That is all. Take the witness.

Cross Examination

By Mr. Wood:

Q. Mr. Wuori, you made two circles around the Melody looking for survivors, did'nt you?

A. Yes.

(Testimony of Charles Wuori.)

Q. How big were the circles?

A. I didn't measure them.

Q. What do you think?

A. We didn't measure the circles, but you can make very short circle with the boat.

Q. Well, can you tell us how wide the circles were that you made?

A. Oh, I suppose, I said about around a mile; that is, through.

Q. A mile away from the Melody or a half mile away from the Melody?

A. Well, a circle is about a mile.

Q. About a mile in diameter? A. Yes.

Q. You made two such circles, did you?

A. I think we did, yes; maybe more.

Q. Well, how long did it take you?

A. I didn't hear you.

Q. How long did it take you to make the circles?

A. Well, it does not take long when your engine is turning continuously. We didn't set any time. We didn't watch the time when we were doing this. We just were trying to get the [65] thing done. The sooner the better, because we were afraid that the Melody might sink any time.

Q. How long do you think it took you? You say not long.

A. I wouldn't say anything, because I wasn't watching the time.

Q. It was a short time, wasn't it?

A. It could not be very long, no.

(Testimony of Charles Wuori.)

Q. What did you think had become of the survivors.

A. Well, we thought they had an explosion in there. That is the only way I can figure it out, and all got killed in the forecastle.

Q. Was there any evidence of an explosion?

A. No. But you had to think something when you saw a brand new vessel in a sunken condition like that. I think that——

Q. But you were in a hurry to get a line on the Melody, were you?

A. I am having an awful hard time to hear you.

Q. Were you in a hurry to get a line on the Melody? A. Yes.

Q. Regardless of the survivors?

A. Well, when we could not find anybody, what else we can do?

Q. You might have looked a little longer. It was a smooth sea, wasn't it?

A. Very nice seas, yes.

Q. You knew such a boat had a life raft, a lifeboat or something, didn't you? [66] A. No.

Q. You know all these fishing boats have some kind of a boat along with them, don't you?

A. No.

Q. They don't? A. No.

Q. Don't they have life raft? A. No.

Q. What do they have?

A. Life preservers. You have got to have them. That is, the U. S. Customs require them.

(Testimony of Charles Wuori.)

Q. How long have you fished off the Columbia River bar? A. I didn't hear.

Q. How long have you fished off of the Columbia River bar? A. Oh, for thirty years.

Q. Isn't it a custom among fishermen on these grounds to help each other when they get in difficulty?

A. Yes, and I have done so many times.

Q. And you have been helped, yourself, haven't you? A. How?

Q. And you have been helped yourself, haven't you?

A. By the Coast Guard. I have been towed in once by the Coast Guard.

Q. And you have helped other people, have you?

A. Yes. [67]

Q. Without making any selfish claims, haven't you? A. Yes.

Mr. Fulton: I object to that. I don't think that is competent. I don't know what it means.

Mr. Wood: I think it is very competent. I will state my position if the Court wants to hear it. I will reframe my question.

Q. Isn't it a custom among fishermen on those grounds to help each other without making selfish claims?

Mr. Fulton: I object.

Mr. Bowerman: As I recall it, you can't prove a custom. You have to plead it, if that is a defense here.

The Witness: May I say something?

(Testimony of Charles Wuori.)

Mr. Wood: Go ahead.

Mr. Bowerman: And besides it is not in the pleadings.

Mr. Fulton: And, besides, you can't change the law by a custom.

Mr. Bowerman: It is objected to as not proper cross examination, if your Honor please.

The Court: You said you would state your position, so you had better.

Mr. Wood: All right.

The Court: Yes.

Mr. Wood: I think their salvage is based on an implied contract to pay for the services and any custom prevailing on [68] those grounds where it is prevailing is part of the contract.

Mr. Fulton: We take the position there is absolutely no duty on anybody to attempt to salvage property. There is a duty, a duty of humanity to attempt, and to make every effort to attempt to save life. And as we understand the law of salvage itself, on account of the hazard involved in it the Courts of Admiralty enforce salvage claims. I don't understand it is in the nature of a contract. It is just the opposite. Anyhow, we have my objection.

The Court: Go ahead, Mr. Wood.

Mr. Wood: Will you answer the question, Mr. Wuori.

The Witness: What was it?

Q. The question is, isn't a custom among fishermen on the Columbia River bar to help each other out? A. At any place, yes, it is.

(Testimony of Charles Wuori.)

Q. And to do so without making a salvage service out of it; isn't that the fact?

A. I don't know.

Q. You don't know that? A. No.

Q. All right. Then if you don't know, let it go. I will ask you this: Have you ever known, in your thirty years on the bar, of one fisherman making a salvage claim against another?

A. I would not know.

Q. No. Now you speak of the hazards you went through. You [69] claim this service you rendered was dangerous, don't you? A. Yes.

Q. Well, when you had two Coast Guard boats alongside of you why did you go ahead with the service?

A. I didn't see any Coast Guard service there when the hazard was there, when we put the line on it.

Q. How soon after that did the Coast Guard boats appear?

A. We towed her about two hours approximately. I don't know for sure.

Q. After that the Coast Guard boats appeared, did they?

A. Then the Coast Guard boats arrived.

Q. At the end of two hours? A. Yes.

Q. About what time of day was that?

A. It was daylight.

Q. About what time of day?

A. I would not know.

Q. You hadn't got inside the jetties, yet had you? A. No.

(Testimony of Charles Wuori.)

Q. You were still out in the open?

A. We were out on the open, yes.

Q. And the more dangerous part of the service you said was when you got inside of the river mouth, and the currents?

A. Yes; when we had the tow on, yes.

Q. Yes. Now before you got in that dangerous part of it you [70] had two Coast Guard boats alongside of you, didn't you? A. Yes.

Q. And you would not let them take a hold; you wanted to do it all yourself, didn't you?

A. I don't know. How did you get that idea? They were towing the Melody the same as we were, three of us.

Q. They were towing the Melody, but so were you, weren't you? A. Yes.

Q. You didn't let go?

A. No. They asked what I wanted them to do. I said to put the towline on it and "let's all try to get this thing in before it sinks."

Q. You think it was a very dangerous service, but you kept your lines on just the same, with two boats there besides yourself, didn't you?

A. There wasn't any chance when we were out in the sea. When we entered the channel, then we needed more towline. We insisted on more towline, so we had more steerage.

Q. So before you encountered any danger you could have said to the Coast Guard, "You take her. I am through," couldn't you?

Mr. Fulton: I think that is argumentative.

(Testimony of Charles Wuori.)

A. I don't know why I should or shouldn't say so.

Mr. Wood: Q. Well, that is what your testimony sounds like to me. [71]

A. When we were trying to get that boat and salvage that property I don't think it would be the proper way for me to throw my lines out. I don't think so.

Q. The two Coast Guard boats were perfectly able to tow her in, weren't they?

A. I suppose so.

Q. And they did do it, didn't they?

A. But the more power the sooner we got in.

Q. After your line was fouled it was the Coast Guard boat that did take her in, wasn't it?

A. Yes, but we had the flooding in favor.

Q. And in the earlier part of it the tide was only half ebb, wasn't it?

A. The tide was about half ebb, or so, when we put the lines on.

Q. Yes. And by the time you got further in, say near Buoy No. 10, was the tide slack?

A. I think the tide was flooding already, but the tide is always setting westward outside of the jetties.

Q. Where were you when the tide turned?

A. I don't know.

Q. You don't know? A. No.

Q. Now will you please——

Mr. Wood: I want the Court to see this, is the

(Testimony of Charles Wuori.)

reason I [72] am carrying it up here, if I may, your Honor.

The Court: I will come down there.

Mr. Wood: All right.

Q. Mr. Wuori, will you look here, please? Has the Clerk got a copy of the libel here?

Mr. Fulton: There are a couple of matters I forgot to cover, but I suppose it will be all right to take them up later, your Honor.

Mr. Wood: Q. Mr. Wuori, that is where you placed the spot where the line was down?

A. That is what I think.

Q. Yes, but in your libel you place it further west, and I want to call it to your attention so you can have it any way you want it.

A. When we made this one we didn't have this chart, and I was thinking we were just about where we were. I explained to Mr. Fulton I didn't have this before.

Q. All right. Now just wait. In your libel you say that approximately later—can you read this with me? "approximately abreast of the west end of both the north and south jetties of the Columbia River, at about the hour of 11:15 or 11:30 o'clock p.m., the wheel of the vessel Stampede II became fouled with the towline of the Triumph." Now that would make it west of that line there—no; further out, west of that line there. A. No. [73]

Q. There is the end of that jetty, and there is the end of that.

(Testimony of Charles Wuori.)

A. No. You meant that one, the end of the jetties there?

Q. That is what you meant?

A. Well, I know it is there.

Q. The engineers don't agree with you, apparently, but place it anyplace you want to.

Mr. Fulton: There is the line.

The Witness: Yes, there is the line, and I thought we were inside of that line.

Mr. Wood: Q. Inside of it? A. Yes.

Q. But in your libel you thought you were west of it.

Mr. Fulton: It doesn't say that, Erskine. He said approximately that.

Mr. Wood: Well, I see what you mean. All right.

The Witness: This part is sunken.

Mr. Wood: Take your chair.

Q. Now you claim that after the line became fouled on your propeller, that you were still able to perform a towage service, do you?

A. Yes, after we freed our wheel, after we got the line out of there.

Q. Yes. And you never got all the line out of there, did you?

A. No. We had, in fact, some lines had been there about a month. [74]

Q. You didn't get all your line out of the propeller until you got on the beach, did you?

A. No.

Q. No.

(Testimony of Charles Wuori.)

A. Well, we got the rest of it, and also, if I can tell you, we had some lines there which had already been there over a month we got out of our net.

Q. Well, the fact is that from this place where you have marked on the chart where the line fouled, you yourself were towed in, weren't you?

A. Yes.

Q. By what boat?

A. I think it was Fort Canby.

Q. That is one of the Coast Guard boats?

A. Fort Canby lifesaving station boats.

Q. That is one of the lifeboats?

A. Yes, sir.

Q. Now do you claim that the reason the line fouled was because the Triumph crossed your bow?

A. Yes.

Q. And you claim that was bad maneuvering on the part of the Triumph?

A. Well, yes, I do.

Q. Now you have spoken of the work that was done on the beach in pumping the Melody out? [75]

A. Yes.

Q. And things like that? A. Yes.

Q. And you have used the word "we," "We did it." A. Yes.

Q. But, as a matter of fact, it was the Coast Guard that did it, was it not?

A. It was all four of us, myself also, with the Coast Guard, and I asked the Coast Guard the first thing in the morning before daylight if they have

(Testimony of Charles Wuori.)

got the power pump so we can use it, and they said they had.

Q. Now who took care of the boat, you or the Coast Guard, after it was on the beach?

A. We were on the watch there all the time. I don't know if anybody took the care of it until it was floated.

Q. What orders did you give toward taking care of these fish? Where did you have them sent to, or order them sent to?

A. Well, I was there with them. We took them over to the Columbia River Packers Association after the Melody floated.

Q. Did you know that Mr. Rustad was fishing for the Columbia River Salmon Company?

A. Yes.

Q. Or was selling his fish to them?

A. I didn't know if he ever sell the firm fish there. I think that was his ordinary fish. [76]

Q. You knew he was going to sell his fish to the Columbia River Salmon Company, didn't you?

A. Through the telephone conversation Frank Hoglund told me it is Tom Rustad's fish. But while I was taking care of that fish I handled everything just like my own.

Q. Mr. Wuori, all I want is this: You knew, didn't you, that Rustad had given his orders to have these fish taken to the Columbia River Salmon Company? A. No.

Q. You didn't know it. Why did you send them to the Columbia River Packing Company?

(Testimony of Charles Wuori.)

A. I have fished for the C.R.P. cannery for about thirty years.

Q. So you sent them to your own place?

A. Just about thirty years; more or less, perhaps.

Q. On what examination of the Melody do you base your statement that she depreciated in value about $3,000 as a result of this experience?

A. I inquired.

Q. Under what examination did you make a determination of that?

A. Well, there wasn't any damage on the hull whatsoever.

Q. No damage on the hull. Did you take the engines down? A. No. How could I?

Mr. Wood: Well, I didn't think you could but I just wanted to find out. That is all.

Mr. Fulton: If your Honor please, there were a couple of [77] matters I did overlook.

Redirect Examination

By Mr. Fulton:

Q. In the libel, Mr. Wuori, you stated you lost your cable? A. Yes.

Q. What was the value of that?

A. The value of the cable is—I couldn't tell you. I think it is $223.00, somewhere around that neighborhood. I don't know, without you open my logbook.

Q. You state in your libel there it was one hundred fathoms.

(Testimony of Charles Wuori.)

A. Three hundred fathoms.

Q. One hundred fathoms, three hundred dollars. As a matter of fact, three hundred fathoms would be about $250.00.

A. Well, the cables which I bought before this one cost me $300.00 apiece, and it wasn't until recently I inquired about what the price was. I don't pay much attention to what such-and-such an article costs. When the bill comes I pay the bill. Before the trial I went over to the Fisher Brothers and inquired about what the price of that cable was, when I replaced it, and they said it was $223.00, something like that.

Q. Now how much was your fuel oil expended on that trip?

A. Oh, I don't know. It is next to impossible to say, but including the cylinder oil and fuel oil I think it is somewhere about twenty or twenty-five dollars.

Q. How much was the Flick radio call? [78]

A. The Flick radio telephone call I think was $10.65.

Q. Now, Mr. Wuori, how many days did you lose from your fishing venture by virtue of this accident? A. We lost just about a week.

Q. How long do you stay out altogether?

A. Oh, it depends on what kind of fishing it is. Early in the spring it is quite often fishing is not so good, but we had the best fishing just at that particular time. Ordinarily we fish two days, three days, and even four days.

(Testimony of Charles Wuori.)

Q. What is the average value of the trip, the gross return of a trip?

A. Between two and three thousand dollars.

Q. A trip? A. Yes.

Q. You feel you lost how many trips on this occasion?

A. I lost a little better than one trip.

Q. You recall what your figures were for the trip that you made, the fishing trip that you made immediately prior to this accident happening to the Melody, what return?

A. I have got the statement right there. I think it was about two thousand dollars—well, can I take a look at that?

Q. Well, just approximately.

A. I think it is about three thousand.

Q. Three thousand dollars? A. Yes. [79]

Q. What was the next one following?

A. I made a mistake on that. That was two thousand. I didn't read right. It was two thousand before and three thousand next after I got it fixed.

Mr. Fulton: That is all, Mr. Wuori.

The Court: When did you folks learn that the crew were not aboard the Melody?

Mr. Fulton: Pardon me, your Honor. I didn't hear what your Honor said?

The Court: He said he thought that none of this crew had been taken off when he took hold of it. When did he learn differently?

Mr. Fulton: Yes.

(Testimony of Charles Wuori.)

Q. When did you learn differently?

A. Well, after we had our lines made fast on the Melody, when I made telephone calls first to C.R.P., I asked Frank Hoglund to call up and inquire about if they know anything about the crew of the Melody. Also I told him about I had already requested them to send a couple of lifeboats out, but if they haven't to please report again, so we can save that boat. And then after he had told me I promised at the time when I had my conversation, I promised to call him as soon as we got the lines made up to see if he had found out about the crew. When I called him again he said the crew was safe. That is the first time I heard it. [80]

Q. Approximately what time of the day was that? The Judge asked that question.

The Court: No. Relate it to another thing. Was that before the crash boat came up, or afterward?

A. I think it was after. I am not quite sure.

The Court: You said, I understood, when the crash boat came up you didn't know whether the crew was with them.

A. No.

The Court: Now what were you going to say about your notebook?

A. On my logbook there, I was so busy, I made several telephone calls to Coast Guard, and also to marine station. I made several calls to Coast Guard and marine operator between three and four o'clock. Ordinarily we put the accurate time right on the

(Testimony of Charles Wuori.)

minute when we talk to these others but at this particular time I was so busy I didn't have time to do it.

Mr. Fulton: Q. You were a little excited, were you?

A. Yes.

The Court: Anyhow, it was before the two boats came and put their lines on the tow?

A. I didn't hear?

The Court: Anyhow, it was before the other boats came and put their lines on the tow?

Mr. Bowerman: Are you hearing, Mr. Wuori?

The Witness: No. [81]

The Court: You ask him.

Mr. Fulton: I didn't understand it either. I am a little bit deaf myself.

The Court: I know, then, it must be my way of putting it. When he took hold of her he thought the crew was dead inside?

A. Yes.

The Court: All right. When the crash boat came up with the crew he did not know the crew was with the crash boat?

A. Nobody never told us before.

The Court: Now wait a minute. Let me finish. He is not sure whether he learned that the crew was alive before or after the crash boat came up?

Mr. Fulton: Yes, he is. He said after, as far as he was concerned.

The Court: He said a minute ago he wasn't sure.

Mr. Fulton: Maybe I am wrong here.

The Court: Now wait. I started to talk, so you

(Testimony of Charles Wuori.)

had better let me finish. He said a minute ago he wasn't sure whether it was before or after the crash boat came up. Now I am asking him if he is sure whether it was before the other two—the other three Coast Guard boats came up, two of which put lines on?

A. Yes, it was long before.

The Court: Long before that?

A. Yes. [82]

The Court: And they came up about two hours after?

A. Yes, approximately two hours. It could be less or more time elapsed.

The Court: Now if you want to add any more about that you may.

Mr. Fulton: Q. In your opinion, when was it that you learned that you yourself, personally—I am not talking about some other members of the crew—that you, yourself, personally, learned that the crew of the Melody were saved?

A. You mean accurate time, the time it takes?

Q. Yes.

A. Or the first proceedings of the work?

Q. Yes, the first proceeding, when you found out.

A. As soon as we got the line——

Q. Made fast?

A. ——made fast, and one of my crew members got back on board the boat, we run the towline out and when the towline was out I started to telephone the Coast Guard and at that time one of my crew

(Testimony of Charles Wuori.)

members, who was on the boat Melody, was down in the forecastle dressing or putting the dry clothes on.

Q. All right. Now just shortly before they left you asked the crew to put this crash boat to work?

A. Yes.

Q. Tell what happened there?

A. Well, they didn't make any attempt to do anything, and, if [83] I am not mistaken, I asked them how about to get this thing in, and I think they answered, "We are not equipped for towing and saving any property; just for life." And they were setting there, some on the forecastle head, some on the main deck on the rail.

Q. Then what happened? How long did the crash boat stay after that?

A. It seems to me they stayed there until shortly after they took one of my crew members back on the Stampede.

Q. How long were they there altogether in that vicinity?

A. I could not tell you. Maybe from five to fifteen minutes.

Mr. Fulton: That is all.

Recross Examination

By Mr. Wood:

Q. You testified just now that the line that you lost was of some value. That line was lost because it was fouled on the bottom, wasn't it—your line that you lost? A. How?

Q. Wasn't the line that you lost——

A. Yes.

(Testimony of Charles Wuori.)

Q. ——fouled on the bottom?

A. I don't know.

Q. Well, why did you lose it?

A. We had to let go.

Q. Why did you lose it? [84]

A. We had to let go because we had this Triumph line on our wheel already and we could not get it loose. We could not get our line loose from the Melody. It was the easiest way to let pull from our end of the line.

Q. You didn't know whether it was on the bottom or not? A. No.

Q. All right; let that go. Now you said you lost a week's time? A. Yes.

Q. Why did you lose so much time?

A. Well, first, we had to stay there on the beach one day.

Q. What for?

A. To get to refuel our vessel.

Q. All right.

A. Then it took us so long to get the equipment back in the place, to put the cable on, and so forth.

Q. It took you a week to do that?

A. Almost a week, yes.

Q. What time did you get your line free from your propeller?

A. The first thing in the morning, before daylight.

Q. You got that free? A. Yes, sir.

Q. It took you a week, then, to get ready for sea after that?

(Testimony of Charles Wuori.)

A. Yes, and we worked pretty hard, too.

Mr. Wood: All right. That is all.

Mr. Fulton: That is all.

(Witness excused.) [85]

The Clerk: State your name, please.

Mr. Syvanen: Armand Syvanen.

ARMAND SYVANEN,

one of the Libelants, was thereupon produced as a witness in behalf of the Libelants and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Fulton:

Q. You are a member of the crew, or were a member of the crew, at the time that this salvage of the Melody was made? A. Yes.

Q. Just tell the Court in your own words just exactly what happened out there, the time that the Melody was sighted—just relate the story and save my asking a lot of questions.

A. Well, we were headed for the fishing grounds up on Destruction Island, in the vicinity of Destruction Island, and Christensen was at the wheel. The skipper was taking a nap at this particular time, and I was laying down on the hatch sunning myself and I glanced about and I noticed a ship or a boat while I was laying there. I was looking

(Testimony of Armand Syvanen.)

around. I didn't pay much attention to it, except it semed to me that she had a heavy list, and—well, I was there, and then Kurtti happened to notice the vessel and he called my attention to it and said apparently there was something wrong with it. So I don't recall for sure whether I told Christensen, who was at the wheel, or whether we called the Captain first, but we [86] called the Captain and told him there was a vessel that seemed to be in distress. We called the Captain and he told us to approach the vessel and see what the score is. When we got there we found this vessel foundered, so we made a couple of circles around the area to see if we could sight any wreckage or anything a man could be hanging onto, but could not see anything. And then I don't know what these other men felt about it, but we decided to try to get a line aboard and see if we could not tow it in. The skipper—let's see.

Q. What?

A. I was trying to think. How far do you want me to go with this?

Q. Go ahead. What did he say? What did the skipper say?

A. Well, he told us we ought to take the boat in; we ought to get it in; and asked us if we were willing to help him get it in, and we agreed to assist in the operation. So he asked one of us if one of us wanted to board the vessel and attempt to put a line on it, and I said I would.

Well, I changed my clothes, put on a pair of

(Testimony of Armand Syvanen.)

wool socks and a pair of shorts, and we circled, and—well, before this we had circled the vessel several times to try to determine the name and to try to locate the name. After I got ready we circled to see if we could not determine the best position to get aboard, and so finally we decided it would be best to be heading the bow in towards the corner of the poop there, [87] which was floating higher than the rest of the vessel, to put a line on board to get aboard. So we made several attempts there to get out, because there was a swell and you have got to be careful. You can't be battering the boats around together. So after a little jockeying I managed to get aboard the Melody. Then I looked around to see if there was any place——

The Court: How far did you have to swim?

A. I didn't swim.

The Court: You jumped over?

A. I jumped from the ladder on the bow of the Stampede over to this floating part of the poop desk on the Melody. And I got aboard and had a little difficulty. I looked around on deck to see if I could find a place on deck to attach a line, but it was impossible. There was nothing there on deck that would hold a tow. So I decided the best bet would be to get the line around the cockpit and around the rudder stock. So I went down in the cockpit. I had to get underneath of the deck mast of the cockpit. Even the open part of the cockpit was under water but the portside was clear of the

(Testimony of Armand Syvanen.)

water and I was able to get clear down in there without ducking my head under water, but in putting this line around the rudder stock I had to get underneath the deck, the floating part of the deck, and reached around and got the line started around. In order to get it around there I managed to jockey it around [88] my foot. I got hold of it with my toe, pulled it around and throwed a bowline in it and had that secured then to our wire towline and got ready to go.

Q. Would you say there was any danger connected with that operation?

A. Well, in this cockpit there were various, oh, plywood and some doggone thing, I don't know what it was in there for. It was adrift. And there were lines, I don't know whether they were jacks or whatever they were; they might have been jacks for trolling. I think they were jacks, down in this cockpit.

Q. A jack is a hook?

A. A jack is a hook used for the trolling of fish, and I don't know what type of things they were, but they were some hooks of some kind. Then there was this plywood. Then there was another thing. The vessel was loaded there and she was rolling in the swell. That works the rudder and you always have a chance to get fouled up—your tiller, tiller line, in getting underneath the tug there, and in case the vessel would sink you would have trouble clearing yourself, coming out of that.

(Testimony of Armand Syvanen.)

Q. Well, you had some apprehension about your safety then, I take it, while you were there?

A. Yes.

Mr. Wood: I object to that as very leading. [89]

Mr. Fulton: Q. What happened then, after that?

A. Well, then this crash boat arrived. The crash boat arrived on the scene and they put this rubber life raft out. Then they came over to the Melody and saw what was going on.

Q. Do you know how they happened to go there?

A. How is that?

Q. Do you know how they happened to go out to the Melody, and what caused them to go out there?

A. Well, they saw the Stampede, I guess.

Q. You don't know that Mr. Wuori asked them to take you off, do you? I think Mr. Wuori testified to that.

A. I didn't hear Mr. Wuori say that, but——

Q. You never heard it?

A. No, but I asked those fellows myself if they would give me a lift there.

Q. Oh, you asked them? A. Yes.

Q. Who was on the life raft to come after you?

A. I am not certain. I believe it was Mr. Rustad, the Coast Guard.

Q. Did you ask what happened to the crew of the Melody? A. I did. I asked them.

Q. This gentleman?

A. I am not sure it was that gentleman.

(Testimony of Armand Syvanen.)

Q. What did they tell you? [90]

A. They told me the crew was picked up. The crew was safe.

Q. All right. What is your judgment of the time, the approximate time, that you sighted the Melody?

A. Oh, in the vicinity of 2:30.

Q. What time do you think you started the tow? A. Oh, at some time after 3:00.

Q. Do you recall the time that the Melody arrived and was beached?

A. Well, that is just—I could just judge from the time I went to bed. I know I went to bed around 2:00 o'clock, and probably around a half hour or forty-five minutes before I got——

Q. It was somewhere around 1:00 o'clock?

A. Yes, in that neighborhood. I know I hit the sack at 2:00 o'clock and it was forty-five minutes or a half hour before that.

Q. Now did Mr. Rustad, or any of the members of this crew, offer any assistance to you people?

A. Not to my knowledge.

Q. Did they offer any the next day when you were pumping out the vessel?

A. Not to my knowledge.

Q. Did you refuse any offer of assistance? Well, of course that goes without saying. Oh, yes. Please explain the position of the Melody in the water at the time you found her, [91] how much of her was above flood, how much above water?

The Court: Pardon me, Mr. Fulton. Do you remember the name, so I could find it in my files,

(Testimony of Armand Syvanen.)

of the salvage case you tried, the Lincoln County salvage case you tried? Do you know how that would be entitled?

Mr. Bowerman: Unga.

The Court: Unga?

Mr. Bowerman: I think so.

The Court: That was the name of the complainant?

Mr. Bowerman: Oh, no. That was the boat. I can get it.

The Court: I wanted to get it now.

Mr. Bowerman: If I can use the phone.

The Court: I don't want to take you out of court.

Mr. Bowerman: Oh, I am not doing anything useful here.

The Court: All right.

Mr. Fulton: Q. Just explain the position of this boat in the water being submerged.

A. Well, the only part of the tug that was afloat or that wasn't swash, was the afterport corner of the vessel by the poop.

Q. What would that be in square feet?

A. Well, I would say roughly that it was six square fet, or more than that.

Q. Of the deck?

A. Of the deck, that wasn't awash.

Q. That is a turn of the port stern. How high was the pilothouse [92] out of the water, the top of her?

A. As I recall, all you could see was part of

(Testimony of Armand Syvanen.)

this flying bridge, and I believe there was the corner of the portside, the forward part of it, showing. You could see on the starboard side part of the flying bridge was submerged.

Q. The hull was absolutely awash, wasn't it?

A. Absolutely, except this stern part of the poop deck.

Q. What angle was she on, say forward and aft? A. Forward and aft?

Q. How much was she sinking down by the head?

A. I would say the bow was completely submerged. What do you want, the angle?

Q. The angle the bow was down off of the level.

A. Oh.

Q. Approximately what was the height of the vessel from the keel to its depth?

A. From the keel to its depth?

Q. To its stem. The top of the bow—the top of the stem, I should say.

A. Oh, I would say around twelve foot. I am not very qualified.

Q. Could you see the top of the stem and the top of the bow of the vessel at all?

A. I don't recall that. I know the bow was submerged.

Q. Clear out of sight?

A. Yes, the bow was submerged, but I don't recall. What I mean [93] is, the deck was submerged.

Q. Well, in your opinion, state whether in your opinion the vessel was settling or had settled, low-

(Testimony of Armand Syvanen.)

ered deeper into the water during the time you were there?

A. Well, to me it seemed like the vessel was in a sinking condition, and I know in towing her we righted her so she would tow on an even keel, making her seaworthy more than she would be lying on the side.

Q. Did you yourself have any idea about her?

A. It would not have surprised me if it had sunk. It was just hit and miss, from what we could see.

Q. How long have you fished out of the Columbia River bar—out of the Columbia River, I should say? A. That is, deep sea fishing?

Q. Yes.

A. I have been only out since about a year ago.

Q. You haven't had very much experience with the currents out there at Peacock Spit?

A. I have had very little sea experience; that is, with fish boats.

Q. As I understand, you retired about what time that night, shortly after the Coast Guard boats showed up? A. About 2:00 o'clock.

Q. About 2:00. You were not in the hold. Were you on deck? A. Oh, you mean—— [94]

Q. During the tow? A. During the tow?

Q. Yes.

A. Yes. After we got under way, after the other towboats, or these Coast Guard boats and the tow got under way I stood a short trick at the wheel and then I retired.

(Testimony of Armand Syvanen.)

Q. And how long were you retired before you were next called?

A. Well, I was called when we were maneuvering around there after the wheel was fouled up.

Q. Have you any idea what time that was at night?

A. Oh, in my judgment I would say around 11:00.

Q. In your opinion how long after that was it before the vessel or before the Melody was beached?

A. Well, I have already said it must be about, oh, one-fifteen or one-thirty.

Mr. Fulton: I think that is all.

Cross Examination

By Mr. Wood:

Q. How far away was the Melody from you when you sighted her from your sunbath position on your boat?

A. Well, I could not determine that because I just glanced at it. It was sort of—I didn't pay any attention to it really. I just happened to glance at this vessel and saw it there and I didn't pay any particular attention to it because I thought she was laying in a peculiar position. It seemed to [95] me she was in a heavy list.

Q. She wasn't completely then over on her beam ends at that time?

A. I could not tell that. I just took a glance. I was laying there and I just noticed this vessel. I paid no attention to it at that time.

Q. Well, when you had the conversation with

(Testimony of Armand Syvanen.)

the other fishermen you said, or you said the boat seems to be in a peculiar position. You must have had more than a casual look at her at that time?

A. Yes. He told me he thought there was something wrong with it then.

Q. How far way was she then?

A. Oh, I would say between—oh, right in the vicinity of a quarter of a mile.

Q. And did you hear Mr. Wuori say that the visibility, while it was good there was kind of a summer haze on the water? A. I did.

Q. Did you agree with that?

A. The only thing I recall about the water, I know it was a sunny day because I was checking the sun.

Q. The point is, if you, not being on the lookout, not watchful for anything, could see this boat in the summer haze a quarter of a mile away, while you were taking a sunbath, right afterwards she could not have been so submerged in the water, as some of [96] the witnesses have made out. That is the point.

A. The only thing I can say there about sighting the vessel, it struck me as being in a heavy list.

Q. About a quarter of a mile away?

A. Just as a shot at it.

Q. Then when you went up alongside of her you could read her name, the Melody, couldn't you?

A. Yes.

Q. You said that her name appeared?

A. We circled her to try to read the name.

(Testimony of Armand Syvanen.)

Q. Yes.

A. We could read part of the name. If I recall it right, this name was in front of this flying bridge and you could read part of that name and make it out.

Q. I don't understand where you said it was. Under the by bridge?

A. Under the flying bridge.

Q. Under the flying bridge?

A. That is as I recall it.

Q. How long were you occupied in tying this line around the rudder stock?

A. Tying this line around the rudder stock?

Q. Yes. A. Oh, fifteen minutes.

Q. And, as I understand it, you stood in the trolling hatch [97] and went partly under the deck to reach the rudder stock; is that the way it was?

A. That is right.

Q. You didn't have to go completely under water yourself to do that, did you?

A. I submerged, or was clear up to my shoulders, but I had to get underneath the deck.

Q. Yes, but I mean you were not under water so you could not breathe? A. No.

Q. No. You said a moment ago that you guessed, or estimated, that there was only six square feet of the Melody above water. That would be only two feet one way and three another? Is that what you mean?

A. Well, I say approximately form the quarter of this deck over to the hatch or the coaming of

(Testimony of Armand Syvanen.)

the cockpit. There was enough room there from the coaming of the cockpit so I could get down into it.

Q. I don't know whether you meant that was six square feet or six feet square, I should say. Which did you mean?

A. There was this much of the boat afloat. There was part of just the after corner of this cockpit was afloat, and the deck back to the quarter, after corner of the deck.

Mr. Wood: That is all.

The Court: Mr. Wood, I am sure I don't need to say this, [98] but so that anybody won't think there are any secrets around here, Mr. Bowerman and Mr. John Hall represented the respondents in a salvage claim, which was vigorously contested here quite a few years ago, and this was briefed extensively on the facts as well as the law. That is what I was just asking about. It was Civil No. 155, Pitts v. Packers Association.

Mr. Fulton: That is all.

(Witness excused.)

The Clerk: Will you state your name, please.

Mr. Kurtti: John Kurtti.

JOHN KURTTI,

one of the Libelants, thereupon took the witness stand as a witness in behalf of the Libelants and, having been first duly sworn, testified as follows:

(Testimony of John Kurtti.)

Direct Examination

The Court: You were in the Feltre case, too, weren't you?

Mr. Bowerman: Yes, your Honor.

The Court: Yes. I find that case here, too, in the file. I wasn't in that case. That is A-12875. That was the collision between the Edwin Luckenbach and the Feltre, in February, 1937, in the Columbia River. That case was tried by Judge Fee.

Mr. Wood: Yes, your Honor, that is right.

By Mr. Fulton:

Q. Mr. Kurtti, you are a member of the crew of the Stampede? A. Yes. [99]

Q. And when did you first see the vessel, see the Melody? Approximately what time of the day did you first see the Melody? I am not going to ask you a lot of preliminary questions, but approximately what time?

A. I should say some time between 2:00 and 3:00 o'clock. I could not say approximately just the time, because I didn't have no watch along with me, and I don't think I would have looked at it even did I have one.

Q. I think you spoke to Mr. Wuori and told him about it, that you had seen the boat?

A. Yes.

Q. And discussed it. And I will say the Captain, Mr. Wuori, was asleep down below somewhere.

A. Yes. He was laying in the bunk.

Q. And you reported it? A. Yes.

Q. Just tell what you did from there on, and

(Testimony of John Kurtti.)

what the vessel did and all of you did. Did you make any circles?

A. Well, when we sighted it, when the skipper got up he gave orders for the mate, Mr. Christensen, to change the course to the west.

Q. Would you talk louder, please?

A. To approach or whistle.

Q. Yes.

A. So we got closer. I told Mr. Wuori, "There must be something [100] wrong, because she was listed so heavy. We were on deck then aft. When we got close the boat was under water, except just parts of it showing. So we got there and we looked around, made a few circles around there to see if there were any men floating or on her, or swimming; then we approached the boat. We didn't see no life of any kind on her.

Q. No lifeboats or life rafts?

A. No life rafts, or men swimming around her with life preservers, so we started to make an attempt to tie it. So after that I was busy with the lines. I didn't have much time to look around. I was busy handling lines and straightening them out of the coils.

Q. What was your business? What were you doing at the time? Were you on the winch?

A. I was on the winch then when we started to tow and slack off the lines slightly. I handled the winch—handled the brake on the winch.

Q. Explain again the condition of this boat, the

(Testimony of John Kurtti.)

position in the water. How badly submerged was she?

A. Well, she was down; the bow was down. There was only part of the stern and the bait tanks, part of the bait tanks—half of the bait tank was visible on that boat, and the stern of the poop deck.

Q. How high was the highest part of that boat that was out of water, the highest point out of water outside of the mast, I [101] guess? How much of the pilothouse was out of water—above water?

A. Oh, I should say about a foot and a half or two.

Q. The highest point?

A. The highest point.

Q. What was the highest point of the stern that was out of water?

A. Oh, the highest point of the stern—I don't think it was more than about a foot and a half, or something like that, from the water to the coaming.

Q. Yes.

A. That is, the highest point. But in conditions like that——

Q. Outside of the pilothouse there was no other part of the cabin showing? A. No.

Q. Just about a foot of the cabin or the pilothouse was showning? A. Yes.

Q. And was it down on the portside?

A. Yes.

(Testimony of John Kurtti.)

Mr. Wood: He said two feet.

Mr. Fulton: Q. What about the pilothouse? Was that above water?

A. No. It wasn't listing so bad.

Q. She was listed, part of it? [102]

A. Yes.

Q. I suppose by the rolls of the waves it was?

A. Well, I didn't notice, because I was busy working with the lines, so I didn't notice. When it was rolling, and all, probably it did come up, but I didn't see it, as far as I can remember.

Q. Well, all right. Did it look to you like a boat that might sink momentarily? A. Yes.

Q. What in your opinion—state whether or not in your opinion the vessel was sinking, or had gone down deeper in the water than it had when you first came there. Or did you notice that?

A. Well, it seems to me it was going down slowly but I could not figure it out, the cause of it. Another thing, I can't see what kept it afloat.

Q. But what I mean is, did you have the feeling that the boat was sinking lower and lower in the water?

Mr. Wood: I object to that as very leading. He has already answered that he could not tell that.

Mr. Fulton: Q. Was she awash inside?

A. Yes, sir.

Q. Was there any place, was there any part of the boat that you could get into, inside of her?

A. No, except that little hole on the stern.

(Testimony of John Kurtti.)

Q. Where Mr. Syvanen talked about? [103]

A. Yes.

Q. Everything else was filled with water?

A. Yes.

Q. Except maybe a foot or so on one corner of the pilothouse? A. Yes.

Q. Everything else—— A. Was awash.

Q. Except part of the bait tank, which was above water?

A. Well, the bait tank, yes; part of the bait tank was.

Q. All right. Where were you when the rudder became fouled?

Mr. Wood: The rudder didn't become fouled.

Mr. Fulton: The wheel. The wheel.

A. I was on the deck.

Q. The afterdeck or forward?

A. Yes, the afterdeck.

Q. What were your duties there?

A. I was leading a cable on the Triumph. We were taking in the tow line.

Q. You were taking in the towline?

A. Yes. And these drums don't lead good. A fellow has got to be standing by and lead it so it won't foul.

Q. In other words, you take the line in as fast as the boat slows up? A. Yes.

Q. You keep steadily bringing it in. Did you notice this tow [104] at the time you were doing that?

(Testimony of John Kurtti.)

A. Yes. Once in a while I took a glance on the other side.

Q. Did you notice whether or not Mr. Wuori changed the course of the Stampede in any respect? A. No, not that I know of.

Q. Did he change his position with the tug?

A. No. I don't know a thing about that, because all I could see was on the sides. I could not tell ahead what was going on, if he changed his course or not.

Q. If he changed his course the tow would be in a different position, wouldn't it? You don't know that?

A. Leading a cable through the drum of the Johnson bar a fellow has got to keep his eye on that all the time, so he hasn't got much chance to look around to see what is going on outside of my own job.

Mr. Fulton: I think that is all.

Mr. Bowerman: Just a minute.

(Mr. Bowerman and Mr. Fulton confer in undertone.)

Mr. Fulton: Q. Were you on deck or awake during all the time this salvage operation was going on?

A. No.

Q. What part weren't you awake, or what part did you observe? What part did you observe, rather, of the operation?

A. Well, the operation. Well, like—oh, you mean at the Melody, when we were pumping it

(Testimony of John Kurtti.)

out, when it was beached. Well, [105] I handled this hose down in the hold and cleared the floating boards off the ways so we could get the hose further down in.

Q. You were there when Mr. Syvanen made fast the line to the Melody? A. Yes.

Q. All right. How long did that operation take place from the time he departed to the time he left the Melody, approximately?

A. Oh, about twenty minutes; fifteen or twenty minutes, something like that.

Q. Fifteen or twenty minutes. Did you see the crash appear? A. That is, I didn't——

Q. Did you see it from where it approached, where it appeared, from what direction it came?

A. No, I didn't.

Q. Did you talk with any of them? A. No.

Q. Did you hear any conversation between any of them, any of the members of the crew of the Triumph? A. Not as I can remember of.

Q. Do you know approximately the time the tow was undertaken? If so, state it—when you started out with your tow.

A. Well, I can't say for sure but it must be around 3:00 o'clock; somewheres around there. It was in that neighborhood.

Q. All right. Do you recall the approach of the Coast Guard [106] vessel to assist in the tow?

A. Yes. I saw him coming.

Q. All right. Just tell what happened.

A. Well, one of them came close, the smaller

(Testimony of John Kurtti.)

boat. He stopped there and asked Mr. Wuori what they could do for giving help. Mr. Wuori said, "Give us help. Kind of put a line on and give us help for towing." And they put a line—I boarded the Melody and put a line on.

Q. On what side of your vessel?

A. The portside, the left side.

Q. On the left side of your vessel. That would be on the north? A. Yes, sir.

Q. The north side coming into the river?

A. Yes, sir.

Q. What happened then? Then how long after that did the next Coast Guard boat show up?

A. I could not say that. Soon after.

Q. Soon after. All right. Then tell what happened?

A. Well, they put their line on the boat, on the Melody, to assist our tow—give us help.

Q. Can you give the Court any idea what time that was about, what time of day? Was it still daylight? A. Yes, it was daylight.

Q. What time was it, in your best judgment?

A. Oh, I should say 5:30 or 6:00 o'clock.

Q. All right. Then what happened after that?

A. Well, we were coming in, towing the Melody in towards the river or towards the channel around the——

Q. Well, what was the next thing that happened out of the ordinary out there that evening?

A. Well, the next thing that happened was when the wheel was fouled.

(Testimony of John Kurtti.)

Q. Are you familiar with this chart here, that is Libelants' Exhibit No. 2? It is a chart of the Columbia River. Are you familiar with that chart?

A. No, I am not familiar with the charts.

Q. You are not? A. No.

Q. You are not a navigator?

A. Of course, I only fished a short while, about a year outside.

Q. Are you familiar with the north and south jetties? A. Yes.

Q. Where in your opinion, or do you know the position of the Stampede and the Triumph, or the flotilla there, at the time the wheel of the Stampede was fouled? Do you know what your position was in reference to any landmark or buoy, or anything else?

A. Well, I thought we were inside the line. If you put a line across, you know, from one to the other, I thought we were inside [108] of that line.

Q. What makes you think that? Were you watching that evening, or anything?

A. Well, I took a look at the north jetties once in a while and I could tell from it on the other side.

Q. You had passed the north jetty?

A. Yes.

Q. You are sure of that? A. Yes.

Q. All right. What happened then after you got in there? You say the line was fouled. Just tell what happened. You were back there having no interest. Just tell how this happened. That is what we want to know.

(Testimony of John Kurtti.)

A. Well, when the wheel was fouled we had to cut that boat loose.

Q. What boat was that you cut loose, the Triumph? A. Yes.

Q. All right.

A. Then when we cut that loose from our boat they took their line aboard and then we tried to get that other part of that line tied to the Melody from the wheel. So we faced it up with that poop pulled high enough so we could hold it by hands and held it there so when Wuori cut them off we could pass it on to the Triumph again.

Q. Yes.

A. And then we had to let go our line. [109]

Q. All right. Then what happened to your vessel?

A. That third boat took us under a tow.

Q. How long were you under tow before you arrived at the Coast Guard base?

A. Oh, I should say about an hour and a quarter, or something like that.

Q. Well, state whether or not you stood by and watched the tow there, or do you know anything about that? A. No, I don't.

Q. Who was at the wheel at this time of the Stampede? Mr. Wuori, was he?

A. Well, I could not say who has. You see, I was on the afterpart, on the deck.

Q. I mean after the time you were taken in tow by the Coast Guard? A. Yes.

(Testimony of John Kurtti.)

Q. You still stayed in your position on the afterdeck?

A. Yes. I was just standing around there.

Q. Watching the tow? A. Yes.

Q. And the tow was progressing all right, satisfactorily? A. Yes, sir.

Q. And do you know what time the tow—what space of time was there between your arrival, I say the Stampede's arrival and the Melody's arrival at the Coast Guard base? [110]

A. Oh, I could not say that. I could not tell the time, just how much difference there was.

Q. Was there a couple of hours or just a comparatively few? A. Oh, just in the minutes.

Q. Just minutes. All right. What was done when the Melody arrived there?

A. She was beached.

Q. She was beached. All right. What was the condition of the water at that time?

A. The tide? Approximately it was ebbing.

Q. Just starting to ebb. Well, what did you do with reference to salvaging the equipment, paraphernalia, fish, engines, and so forth?

A. Well, I didn't do anything during the night. In the morning we did, but not during the night we didn't do anything, because the water was high so we could not do anything.

Q. All right. When did you start to work on her? Just tell me what you did with reference to salvaging it, taking care of it, saving equipment, the fish, and so on, and what was done?

(Testimony of John Kurtti.)

A. Well, the pump was brought there and the hose was put into the hold.

Q. What?

A. The pump was brought, the Coast Guard——

Q. I am talking about what you did. [111]

A. What I did? I handled the hose into the hold and then cleared these boards off of the way when it was floating so as to get the hose in there deeper.

Q. Did you accompany Mr. Wuori to the Coast Guard?

A. No, I did not, but I was down in the hold.

Q. You were down in the hold?

A. I was down in the hold, holding that hose.

Q. Feeding it down? A. Yes.

Q. And how long were you working pumping this water out, just the actual pumping of it? How long did the actual pumping of it take after you had the pumping position and was ready to pump?

A. I should say about an hour, actual pumping.

Q. About an hour. You know how much work or how much time it took assembling the pump from the Coast Guard station, getting it up there and putting it down?

A. No, I don't know that.

Q. But it took at least an hour to do that?

A. Yes.

Q. Then what was done after that, after the vessel was pumped out? Do you know anything about that? A. No.

Q. Making any attempt to salvage the fish or dispose of the fish down there? [112]

(Testimony of John Kurtti.)

A. Well, I was sent—we were sent to the packing company by Charlie Wuori to get a skiff that we were going to start salvaging the fish from the boat and haul it up there, but then he had decided in the meantime not to do it, so we left the skiff there, up by the station. We already had it down in the water ready to run down with it.

Q. One time it was thought the best and most expedient thing to do was to take the fish out, and then later Mr. Wuori came to the conclusion it was better to take it up at the cannery?

A. Yes. Point Adams I think is a seine skiff. It wasn't a seine skiff. It was one of these little sculls repairmen use. It was up on the dock there. We loaded it down to the river, already to go down, then Wuori had sent Cy along to tell us not to take it down.

Q. He came to the conclusion you could take the fish off at Astoria, and take them off there with less trouble? A. Yes.

Q. Did you see the Captain, or any of the members of the crew, of the Melody down at the Coast Guard station during the time you were there doing the work, pumping her out and taking care of the equipment, getting her ready?

A. I saw men there but I didn't know who they were.

Q. Did anybody come up and offer you any assistance outside of the Coast Guard boys?

A. No. [113]

(Testimony of John Kurtti.)

Q. You worked, and worked hard there, did you not?

A. It wasn't really hard work but it kept us busy.

Q. All right. Now did you see Mr. Syvanen aboard the Melody out there make fast his line? Did you watch him carefully? A. What.

Q. Did you see Mr. Syvanen aboard the Melody and make fast the towline? A. Yes.

Q. I would like to have you tell the Court, in your opinion, whether or not that was a service with any hazard connected to it, to his life, to his person, or to his limb? Was there any hazard connected with that?

A. Well, if I was going in there, I should think it was kind of a risk. You may get hurt, or something may slip down there and you would get hurt, or maybe get thrown underneath. I would not say, but I think it kind of hazardous to go on the boat.

Q. Any hazards or possibilities the boat might sink at any time? A. Yes.

Mr. Fulton: That is all.

Mr. Wood: No questions.

(Witness excused.)

Mr. Fulton: Mr. Christensen. [114]

Mr. Wood: If your Honor please, it is quite evident we are not going to reach our side of the case and I have to do something before 5:00 o'clock. May I be excused?

Mr. Fulton: This is my last witness, though.

Mr. Wood: Even if it is, I don't imagine we will go into our case this late this afternoon.

The Court: No. We will just hear this man.

Mr. Wood: Yes. I think I will be excused, if your Honor please.

Mr. Fulton: Mr. Christensen, please.

The Clerk: State your name, please.

Mr. Christensen: Cyrus C. Christensen.

CYRUS C. CHRISTENSEN,

one of the Libelants, was produced as a witness in behalf of the Libelants and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Fulton:

Q. The first question I am going to ask you, Mr. Christensen, is, you were a member of the crew on this salvage operation here?

A. Yes.

Q. Did you hear any conversations between the members of the crew of the crash boat and Mr. Wuori? A. I did. [115]

Q. What was it?

A. Well, when he first came up alongside they were just standing there watching us a while, and we thought maybe they were going to take a line on there, so we just kept watching, so he went over there all of a sudden and said something like,

(Testimony of Cyrus C. Christensen.)

"What is the matter with you fellows? Why don't you take a line?" or something like that, see?

Q. He asked them to take a line aboard?

A. Yes. That was on the crash boat.

Q. What answer did he get?

A. Well, he didn't get much of any answer.

Q. You didn't hear any answer?

A. Well, yes. They did talk a little bit,—that they didn't take any line on any boat; they just picked up lives.

Q. Not property?

A. Not property. That was all that was said.

Q. Did you hear him ask them to put on some chafing gear?

A. Yes. Well, when he asked them, he asked them to put on lines.

Q. And what answer did they give to that, if any, do you recall?

A. I don't recall the answer to that. They probably—well, they didn't—I guess they didn't have any.

Q. All right. What was approximately the first time that you saw the Melody?

A. Well, we were quite a ways away from it when I first saw it, [116] and I didn't say anything to anybody right away. I was at the wheel. The other two fellows were aft and Mr. Wuori was inside, and I was steering a little north of it all the time and they kept watching something to our left for quite a ways. I could see something white in the water and a mast, kind of leaning towards

(Testimony of Cyrus C. Christensen.)

the north, and at first I thought it was a drag boat picking up a heavy haul, a heavy load of fish picked up at one side, with a heavy load, and got a little closer. You could not make it out right away. It kept looking funnier all the time. It seemed at first I could see more light until we got within,—well, within a half a mile or so of it. Then I got to talking to fellows in the tug. They had been looking at it, too, I guess, oh, I don't know how long. So they called Mr. Wuori and he came and took the wheel and come right over to it. We didn't steer out of the course to go right over to it but got pretty close. We could see that it was sunken at that time.

Q. Did you make any effort looking for any survivors?

A. Well, he took the wheel then.

Q. Was there any talk about looking for survivors? A. Yes.

Q. You were all on watch for that, were you?

A. Yes.

Q. Approximately how many circles around there did he make, do you know? [117]

A. Well, I don't know. I guess we made a couple of circles around there, going around there, going around, and then when we went around I think the first time that she started around close kind of looking to see what boat it was.

Q. First you made a couple of circles, as I understand it, looking for survivors; is that right?

(Testimony of Cyrus C. Christensen.)

A. Yes.

Q. Then after you made these circles, then what did you do?

A. Well, we went—we were getting pretty close to the boat, and then we could see the name, part of the name until we made it out.

Q. In other words, after you looked for the survivors, then you went to find out what was the name of the vessel; is that it? A. Yes.

Q. O. K. Why couldn't you read the name?

A. Well, it was partly under the water. At first we could just see the first two letters, M-E; then in come a wave, and a little bit later maybe we could see another letter or two, and we made out the name.

Q. You could see the name was written on the stern? A. No.

Q. Could you read that?

A. Couldn't read that.

Q. Could not read that. Why? Why couldn't you read it? [118]

A. It was under water.

Q. Under water. This letter that you did see, you say, the M-E, where was that written?

A. That was on the pilothouse.

Q. What part of the pilothouse?

A. By the flying bridge.

Q. I mean was it on top of the pilothouse on the roof, or the floor of the pilothouse? How would you describe that?

(Testimony of Cyrus C. Christensen.)

A. No. It was right in front of the pilothouse, on the flying bridge.

Q. Well, this piece of apron here at the top, the outside top of the pilothouse, was covered with canvas, just like that, where you walk up there?

A. Yes.

Q. Where you have a flying bridge there, and the wheel above it? Was that written on that?

A. I could not see that part of the house. Where I saw the name was in front of the pilothouse on a canvas, what they call a flying bridge.

Q. That is the apron?

A. The water was halfway up that wall on the pilothouse. That wheel is about an inch and a half, I guess, in diameter.

Q. And across this apron, or, you might call it, a railing that surrounds the top of the pilothouse made of canvas, it is part of the wall? [119]

A. It is sort of a windbreak that was there.

Q. There is Melody written on that?

A. Yes.

Q. How high does that extend above the top of the pilothouse—that windbreak?

A. Oh, that is about four feet, I guess; three or four feet—three and a half.

Q. Four feet. How much of that was out of water?

A. Oh, that was right around half, I guess, but it leaned over so it was hard to tell.

Q. That is built on top of the pilothouse, isn't it—this apron or windbreak?

(Testimony of Cyrus C. Christensen.)

A. Yes, sir, that is on top.

Q. Just upon the front of the pilothouse, and that is about four feet high, but there was only about two feet of that railing above water, and that is where the name Melody was written, you think?

A. Well, I think that is where it was; either there or the stern, I don't remember.

Q. Now, wait a minute. Let's get straight on that. Could you or could you not see it from the stern? Stop and think now. If you are not certain, why, say so.

A. Well, I could see a couple of letters on it some place.

Q. Anyway, you saw a couple of them. Well, all right.

A. I mean when I first looked. It has a name on the stern. [120]

Q. Did you hear any conversation between Mr. Wuori by radio telephone and the Coast Guard?

A. I did.

Q. Can you cite the instance that took place about the time of these telephone calls; that is, in reference to why the tow had been undertaken, or was under way, or when it was that he first called that you knew about?

A. Well, he first called when we were around the boat there, before we took any line or anything.

Q. He first put a call for the Coast Guard?

A. Yes.

Q. Before you put lines across?

A. Called the Coast Guards.

(Testimony of Cyrus C. Christensen.)

Q. When was that in reference to the time he discovered the name and could not find the survivors? A. When was that?

Q. Yes; when? A. Well, right after that.

Q. Right after that?

A. Right after that.

Q. Did you hear what Mr. Wuori said to the Coast Guard?

A. Well, he asked them if they knew about any boat being wrecked or capsized.

Q. Did he ask anything about the crews, whether there were any survivors? [121]

A. Yes.

Q. Could you hear their answer?

A. No, I could not. I could hear sometimes.

Q. What?

A. I can hear it sometimes, but sometimes I was standing out by the door there.

Q. But you did hear him ask the Coast Guard about the survivors of the Melody? A. Yes.

Q. And that was before you put any lines on?

A. That was before.

Q. Did you hear any other telephone conversations?

A. I heard him when he called up the C.R.P.A.

Q. What did he tell them, if you remember?

A. Well, he asked them—well, then he asked whose boat it was.

Q. Did Mr. Wuori seem to be concerned about the survivors or this boat?

(Testimony of Cyrus C. Christensen.)

A. Yes. He asked the C.R.P.A., he asked for them——

Q. Mr. Hoglund?

A. Mr. Frank Hoglund, yes. He asked them to call up the Coast Guard board by telephone to find out.

Q. I mean, what was Mr. Wuori's demeanor out there about seeing a ship lying in the water foundered—waterlogged, at least?

A. Well, he asked Frank Hoglund—he said he didn't know [122] whether they were inside yet or what happened to them.

Q. He was really concerned about them, was he?

A. Yes.

Q. Was there considerable talk, or was there any considerable talk, as between a bunch of boys out there, as to what happened?

A. Yes, there was.

Q. All right. Then you took the boat under tow quietly. Did you observe Mr. Syvanen's actions, getting aboard that vessel to pass the line?

A. Did I see it, you say?

Q. Yes, sir. A. Yes.

Q. Did you consider there was any hazard connected with that? A. Yes.

Q. To his place—I mean, to his person, life or limb? A. Yes.

Q. Did you consider there was danger connected with it? A. Yes, there is.

Q. Why? Just explain that to the Court.

A. Why, leaving one boat in that condition at

(Testimony of Cyrus C. Christensen.)

sea, even in leaving one boat to another at sea, I consider not safe exactly, but then going on a boat in that condition, the way I look at it, from the time I first saw it, why, it seemd to be up higher when I first saw it from a distance than when we got up to it; so the condition it was in then, and getting down [123] in that hold there at the stern, why, I wouldn't call that very safe.

Q. You think he was presented and confronted with a real hazard do you? A. What is that?

Q. You think he was confronted with a real hazard there? A. Yes.

Q. That was dangerous? If you had done that yourself you would have considered it was in a position of danger?

A. I offered to do it, but then I knew it was dangerous.

Q. You offered to do it but you knew it was dangerous? A. Yes.

Q. Did Mr. Wuori talk about the danger connected with it in any way? There was some talk about danger, wasn't there?

A. Well, there was some talk about it, but I don't remember.

Q. All right. Do you recall the instance of the Coast Guard about coming up? Just tell the Court briefly about the Triumph and the other boat coming up and making contact.

A. Well, I don't remember. I remember when the crash boat left and——

Q. How long had the crash boat left?

(Testimony of Cyrus C. Christensen.)

A. Not very long; ten or fifteen minutes, I guess.

Q. Did you hear any conversation—I don't know—between the crash boat and Mr. Wuori? Did I ask you that? A. Yes. [124]

Q. You answered that? A. Yes.

Q. All right. You were present there on duty when the two Coast Guard boats showed up. Just tell the Court in your own words just what happened there.

A. When the boats came?

Q. Yes.

A. Well, after the crash boat left we started towing.

Q. Approximately how long had you towed before you had any assistance?

A. Well, I believe we coasted two hours.

Q. And what boat showed up first, the surfboat or the Triumph, if you recall?

A. I wouldn't say. I don't remember which one did.

Q. You remember after that, anyhow, two boats, two Coast Guard boats, showed up and rendered assistance? A. Yes.

Q. By making fast to the tow?

A. One made fast on one side, one made fast on the other side.

Q. Do you know what side the Triumph was on, and what side the——

A. The Triumph was on the right-hand side.

(Testimony of Cyrus C. Christensen.)

Q. All right. What was the next thing that happened?

A. Well, there came another boat, but they didn't take any hand. It followed us in and after it got under way, I don't [125] know; one of us steered the wheel, and I steered a couple of hours, and then a couple of us went down below and went to sleep a while, so I was asleep until we got inside the bar and they came down and woke me up.

Q. What time were you awakened, if you recall? A. At 11:00 o'clock.

Q. What was the occasion for awakening you, if you know?

A. They said they had a line in the wheel.

Q. All right. Did you notice your position at that time?

A. Well, I looked at the light over at Cape Disappointment.

Q. And where were you, in your opinion, in reference to a line drawn across the west ends of the north and south jetty?

A. Well, Cape Disappointment is inside the north jetty and, oh, I would say that would be about—the lines were there about a half a mile or so inside.

Q. Half a mile inside?

A. Inside; all of that.

Q. Then what happened then? When you came on deck what was the situation as you found it?

A. Well, I just woke up then. I know we were fooling around there with the lines and finally got

(Testimony of Cyrus C. Christensen.)

the line out of the water there on the stern and Charlie cut that off, and we handed the other end back to the Triumph; one of them, anyway. I could not see the name, it was pretty dark. It was the one on that side (indicating), though. Then we had to let our [126] cable go and——

Q. Was that cable ever recovered?

A. Not to my knowledge.

Q. Was it attached to the Melody the next morning, or when she arrived in that night?

A. No.

Q. It was gone? A. It was gone then.

Q. Apparently it fouled on the bottom, or something?

A. It was on the Melody, as far as I know, when it let go from the other end.

Q. And it wasn't there when the Melody got in to Coast Guard? A. No.

Q. All right.

A. Then this other boat that had been standing by towed us in right ahead of the other two.

Q. State whether or not it is a fact that you stood by during the time the tow was being completed by the Coast Guard? Do you know anything about that—stayed in the vicinity there to render assistance? A. The Triumph.

Q. The Triumph. Do you know anything about that? Charlie didn't talk to you about what thoughts were in his mind at that time? I mean Mr. Wuori. If you don't know, say so.

A. Well, I can't just remember now. [127]

(Testimony of Cyrus C. Christensen.)

Q. O. K. Do you remember about what time you got in, what time the Triumph, or what time the Stampede, was beached, and what time the Melody was beached?

A. Well, they got on the sand before we did. They were aground before we did, but we got in there first.

Q. You were not very far apart at any time?

A. No. We could see all the time.

Q. Practically together? Were you practically together all the way in?

A. Well, we were just ahead of them. We could see them all the time.

Q. Now the next day was the salmon paraphernali and equipment taken care of? A. What?

Q. What did you boys do the next day in reference to taking care of the property? Did you assist in that work? A. Yes.

Q. What was done?

A. Well, Charlie, and I guess one of the other fellows, got up first kind of early in the morning; I guess it was about daylight; anyway, before I got up; and they were—I don't know what work they were doing around there then, but I know they were up doing some work. You could hear them around there. Then they came in and woke me up just a little before seven and I got up, and then we were getting, a little later [128] than that we were getting the gas pump down there to pump out the hold and had gone up to the Coast Guard and the Coast Guard were along, some of them.

(Testimony of Cyrus C. Christensen.)

Q. Did they have any of the crew of the Melody there assisting in the care, in any respect, of any of the property belonging to the Melody, or its equipment?

A. No, not until about ten o'clock, I guess, there was a couple down and got some clothes.

Q. Came down and got some clothes?

A. I don't know who they were. I saw a couple of fellows come down and get a pair of pants off of the boat.

Q. Was there any work being done at that time? I mean by the crew of the Stampede. Was there any work being done on the Melody by the Stampede's crew at the time that these gentlemen showed up?

A. Yes. We were just about finishing up by that time.

Q. Just about. Did they offer any assistance?

A. Not that I know of.

Q. Did they offer to help you any?

A. I didn't talk to them.

Q. Did they ask you any questions, or anything?

A. No, they didn't ask me any.

Q. How long did they stay?

A. I was up at the Point Adams Packing Company when I saw them down there, or just back from there. [129]

Q. When you went back were they there or were they gone?

A. They were just leaving then.

Q. How long did you see them there? During

(Testimony of Cyrus C. Christensen.)

what period of time were they there when you saw them?

A. I just saw them about five minutes when they were leaving the boat.

Q. Were Mr. Wuori and the rest of the boys still working on the Melody there at the time you got back from Point Adams?

A. Yes. He sent one of the boys up to Point Adams after us.

Q. I mean, when you got back and the crew of the Melody, or these two gentlemen you expect me to believe to be members of the Melody crew,—they were leaving, weren't they? A. Yes.

Q. Was the work at that time completed on the Melody by the members of the crew of the Stampede? In other words, was Charlie and his crew still working?

A. No. We were still working.

Q. That is what I want. Did you accompany the boat, the Melody, from down there up to the cannery? A. I was on the Stampede.

Q. You were still on the Stampede?

A. I was still on the beach.

Mr. Fulton: I guess that is all, isn't it?

Cross Examination

By Mr. Tatum: [130]

Q. Who went with you down to the other cannery to get the skiff? Weren't there two men down at the cannery getting the skiff? A. Yes.

Q. At the time you left had the Melody been

(Testimony of Cyrus C. Christensen.)

completely pumped out, or was there still some work going on?

A. They were still working around there.

Q. So two of the members of the crew of the Stampede were gone at that time? A. Yes.

Q. Then pretty soon a third member of the crew came down and told you not to bring the skiff; isn't that right? A. Yes.

Q. So the only man who was still there helping the Coast Guard was still Mr. Wuori; isn't that right?

A. Well, when he came after us he got back before we did, because he helped pull the skiff back on the dock. We already had it in the water.

Mr. Tatum: That is all.

(Witness excused.)

Mr. Fulton: That is our case, but we would like to reserve the right to maybe fill up some holes in the morning. In other words, we don't want to rest until tomorrow.

The Court: Adjourn until 10:00 o'clock.

(Thereupon, at 4:45 P.M., court was adjourned until tomorrow, Tuesday, October 30, 1945, 10:00 o'clock A.M.) [131]

Tuesday, October 30, 1945,

Court convened at 10:00 o'clock A.M., pursuant to adjournment, and proceedings herein were resumed as follows:

Mr. Fulton: Mr. Christensen.

Mr. Wood: If your Honor please and Counsel: I thought counsel had closed, or would close their case last night, and I had Mr. Webb, of the San Francisco Board of Marine Underwriters here to testify the first thing this morning on the promise I would dismiss him and let him get back to his office. He will testify to the value of his ship.

Mr. Fulton: Absolutely. Just step down, Mr. Christensen. We are excusing you for just a minute and calling another witness.

Mr. Wood: Mr. Webb.

The Clerk: Will you state your name, please.

Mr. Webb: Kenneth Albert Webb.

KENNETH ALBERT WEBB

was thereupon produced as a witness in behalf of the Respondents and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Wood:

Q. Mr. Webb, at present you are the local representative here in Portland of the San Francisco Board of Marine Underwriters, are you not? [132]

A. Yes, sir.

(Testimony of Kenneth Albert Webb.)

Q. And in a very few words tell what your sea experience was prior to your occupying this position?

A. From a wiper up to a chief engineer going to sea; from a chief engineer to a port engineer, to assistant marine superintendent, to co-ordinator in one of the larger repair yards here in Portland, and then with the San Francisco Board of Underwriters.

Q. And as a representative of the San Francisco Board what are in a general way your duties?

A. To value these boats for the interested people that hire us to do it after accidents, and to write up the repair risk, render bids to have that work done and check the bills when they come in to see that they are for payment and properly stated.

Q. And generally to supervise repairs of damaged ships?

A. Yes, sir; to see that the boat is back in its original good condition.

Q. Now in the course of those duties did you have an occasion to make a survey of the Melody?

A. I did.

Q. And before I go into that, what in your opinion was the market value of the Melody just before this accident? A. Twenty thousand dollars.

Q. How much? [133] A. $20,000.00.

Q. $20,000.00. And as a result of this accident what damage was done to her?

A. Her engines were beaten up very badly by

(Testimony of Kenneth Albert Webb.)

water, crankshafts bent, liners broke, to a repair bill of approximately $3300.00. All of the calking was gone out of the boat, the decks were cut, and the house was moved out, and the total to repair her and put her back in good condition was about $7500.00.

The Court: Aside from the engine?

Mr. Wood: No. That is including the engine.

The Witness: Including it.

Q. You might explain to the Court, since there was no collision or impact to the engine, how all this damage could take place to the engine?

A. That engine is a Diesel. It runs with an awful heat. The oil going in there explodes under pressure and creates that heat. This engine was, or this boat was submerged or sunk while the engine was running. The temperature of the ocean water on the Oregon Coast was around 58 degrees. The explosion was about 2000 degrees. Then the engine filled up with water and they came up with a hard impact in the cold water. The cold water in the 50 degrees will not come in contact with the hot engine. The impact from that heat would mean the heat coming up from the engine head with the amount of water in there behind that. [134]

Q. So all damage from the engine was done almost immediately when the salt water hit the engine? A. It was done immediately.

Q. Were there any facilities to repair the engine at Astoria?

A. None that we could use. No, none at all in

(Testimony of Kenneth Albert Webb.)

Astoria. The engine had to come back to the Mack Truck people, the makers of the engine.

Q. At Portland?

A. Yes, at Portland. They sent East for the parts.

Q. I don't know how long the boat remained at Astoria, or how long it was there. It stayed there several days between the time it was beached and the time it was towed up to Portland. But I want to know whether in that intervening delay there of several days, further damage occurred to the engine. In other words, it was insinuated here yesterday that Rustad was remiss in not having something done to the engine down there, and I want to know whether that short delay down there after the vessel was beached in any way incurred the damage or not?

A. It didn't show it when we checked it to piece her up.

Mr. Wood: No. That is all.

Cross Examination

By Mr. Bowerman:

Q. Mr. Webb, how long have you been with the Board of Underwriters?

A. Since January 1st. [135]

Q. Of this year?

A. This year; yes, sir.

Q. And this work you did down there in surveying this vessel, was that a part of your employment with the insurance people? A. Yes, sir.

(Testimony of Kenneth Albert Webb.)

Q. And they are the ones who sent you in there, and you did the job for them?

A. For them, yes, sir.

Q. And they were interested in this matter, so they sent you in to survey it?

A. That is right.

Q. Do you know of any boat similar to this that was sold within this area within this year?

A. That were sold? No, sir. I have nothing to do with the selling of them.

Q. Well, I was wondering if you—you were asked about the market value of the boat, and I wondered if you knew of any sale of a boat similar to this, in a condition such as this was in immediately before it was damaged?

A. My market value there——

Q. You haven't answered my question. If you want to add to it you can.

A. All right. Ask the question.

(The question was read as follows: "Well, I was wondering if you—you were asked about [136] the market value of the boat, and I wondered if you knew of any sale of a boat similar to this, in a condition such as this was in immediately before it was damaged?")

Mr. Bowerman: Or within a reasonable time of the accident? A. A fish boat, no.

Q. Huh? A. Not a fish boat, no.

Q. I don't know as I quite follow you, Mr. Webb. What do you mean by a fish boat?

A. Well, this is a fish boat. I have other dam-

(Testimony of Kenneth Albert Webb.)

ages here on the river, such as towboats that have been on the sea and broke and then we sold them as is.

Q. No. You were asked about the market value of the boat immediately before this accident, as I understood it, and you said $20,000.00; is that right?

A. Yes, that is right.

Q. Now I am seeking to find out whether or not you knew of a sale within, oh, say six months of that time, of a boat as new as this was and substantially the same.

A. I tried to explain that to you when you stopped me. Our market value is figured on the length, the depth and width of the boat, which gives builders the tons, multiplied by a set figure. That gives the actual value of the hull, plus the engine, which is the market value of the engine.

Q. That is an arbitrary rule that somebody has made up, isn't it?

A. That is the rule that is used by all your shippers and all the underwriters throughout the world.

Q. Do you know of any boat that sold similar to this within six months of the date of the accident? A. I do not.

Q. Do you know of any boats that were sold similar to this within six months since the accident? A. No, I don't.

Q. This accident occurred, as I would say, about the beginning of the tuna fishing season; is that right?

(Testimony of Kenneth Albert Webb.)

A. I don't know. I just judge it was, yes.

Q. Yes. As I recall, it was along the latter part of July, wasn't it?

Mr. Fulton: July 25th.

Mr. Bowerman: July 25th.

Mr. Fulton: The 24th.

Mr. Bowerman: The 24th or 25th, that the record shows.

Q. Now do you know anything about the earning power of a boat of this kind the last year?

A. As a surveyor of boats and damages we do not go into the fishing end of it.

Q. No, I am not asking you now as a surveyor. I am just asking you, do you know anything as to the earning power of [138] a boat similar to this, last year, on or after July 24th—I mean this year, on and after July 24th?

A. No, I don't.

Q. And it was a fishing boat, wasn't it?

A. Yes.

Q. And, as you understand, it was out on a fishing voyage when this accident occurred? That is what it was doing out in the ocean, wasn't it?

A. That is the only service, as far as I know. I found the boat at Astoria.

Q. However, that is what the boat was built for, and adapted to, wasn't it? A. Yes.

Q. The boat was new, wasn't it?

A. About eight months old.

Q. And do you have any personal knowledge what that boat cost new?

(Testimony of Kenneth Albert Webb.)

A. I know what it cost. Yes. I quoted that price to you.

Q. Well, that is your rule?

A. I think you will find that is the rule of the shipyards where they were built, too.

Q. Have you investigated to see what the annual pay for that boat is in money? A. No.

Q. Or what he contracted to pay? [139]

A. No.

Q. You don't know anything about that?

A. I didn't go into that, no.

Q. But you assume some shipyard somewhere follows this rule the underwriters have; is that right? A. That is right.

Mr. Wood: It is not the underwriters' rule. It is everybody's rule in the ship business. Isn't that correct?

A. That is right.

Mr. Bowerman: Q. What installations were on the boat that were unnecessary but useful, such as the radio, things of that kind?

A. I didn't understand you.

Q. What was on the boat in the way of radio installations, and other things that cost money and yet are not absolutely necessary perhaps to the operation of the boat?

A. Well, that is a rather technical thing. He had his ship-to-shore radio, and direction finder, and has a safety sea factor that, in my opinion, is necessary.

(Testimony of Kenneth Albert Webb.)

Q. That is necessary. Is there a variety of these things, some costing more than others?

A. There is a variation, the same as any radio, in prices, yes. They will average around seven hundred dollars.

Q. What did this one cost?

A. This one here, I should judge—— [140]

Q. If you don't know I will ask you to say so.

A. I don't know what it cost, no.

Q. And was it a new instrument when it went on there?

A. That I can't answer. I seen the boat in her sunken condition—never before.

Q. Were there two bait tanks on it?

A. There was bait tanks, yes.

Q. What did they cost, such as the ones on this boat? A. I don't know. They vary.

Q. They are not figured into this?

A. They are not figured into the boat at all.

Q. No. But they were there on the boat?

A. At the time of this accident they were there.

Q. Yes. What other installations or instrumentalities were on this boat that were not figured into this cubic foot formula you have?

A. Oh, there would be your bait tank, that fishing net, seine, and such fishing gear, you know, as used to fish with. That is not figured in on the value of the boat.

Q. Was it necessary to install those engine repairs here, or could they have been done at Astoria?

A. They could have been done at Astoria about

(Testimony of Kenneth Albert Webb.)
three months later. That is, the boat could have been done and the engine would have been sent to Portland to the Mack Truck people by truck. [141]

Q. Well, doesn't anyone install or repair these engines except the Mack Truck?

A. They can be, yes, but most of the owners demand——

Q. What?

A. They can be, but most of the owners demand that they do it.

Q. They have an engine plant at Astoria—the Mack Truck people do?

A. Not that I know of.

Q. Did you inquire to see?

A. I had Anderson Fish Cannery inquire, and Mr. Cherry inquire.

Mr. Bowerman: I move to strike that out, and I ask you whether you inquired from the Mack Truck Company.

A. No, I didn't inquire.

Mr. Bowerman: Your Honor, I would like to ask that the answer be stricken.

Mr. Wood: I oppose the striking. He shows that the cost undoubtedly was to be paid on his behalf.

The Court: It may remain in, subject to the motion.

Mr. Bowerman: Q. What did he do—take this engine out and put in a new one?

A. Took this engine out, took it to the Mack

(Testimony of Kenneth Albert Webb.)

Truck people and they rebuilt it and brought it back to the shipyard.

Q. That was done here in Portland?

A. Yes, sir.

Q. Did you say that you estimated the damage at $7500.00, or [142] that is what it cost?

A. I estimated the damage, when I called my people, at $10,000. The actual bill on the job, when she was up for everything—this was everything that I could possibly attribute to it—was $7707.24.

Q. Now was that due to some new installation?

A. That was all due to the tow bill and the wages for the man that was representing the owner when that work was going on.

Q. The owner had a man there while the work was going on?

A. Yes, to take care of his interest.

Q. And the work was contracted out by the insurance company?

A. No, never. The work is always contracted out by the owner and when the prices have come in the insurance representative will either O.K. or reject, but the owner has the privilege to go ahead with it regardless.

Q. Well, what was actually paid, and who paid it, for this damage?

A. The actual bill on this——

Q. I asked you what was paid?

A. That I don't know, because I never saw the checks. I wrote out an account and wrote this wreck up and sent it off to the interested people.

(Testimony of Kenneth Albert Webb.)

Q. That would be the insurance company?

A. Yes.

Q. And the bill was the amount you have given?

A. Yes, sir. That was all of the bills added together.

Q. And was there damage to the bait tank?

A. The bait tank I wasn't interested in. If there was any damage on there there was no bill showed for that. There are certain things that we struck out that we will not handle at all, if they are not right with the part of the boat that we are interested in.

Q. Well, you mean it is not insured, or what?

A. Yes; like the gears, the bait tanks, and things like that.

Q. By the gears you mean the fishing tanks and things like that? They are not insured?

A. Yes, sir, that is right.

Q. Have you the time there that was put in to recalk the boat, the hours?

A. No, I haven't with me, but that can be got, I presume.

Q. Mr. Webb, is it, or is it not, a fact that included in this bill is a substantial amount of money for addition to the weight of the keel so the boat would be more stable and would not tip over?

A. No, I should say not.

Q. What? A. Under no consideration, no.

Q. That is not in the bill?

A. That is not.

Q. You know? [144] A. Yes, I do.

(Testimony of Kenneth Albert Webb.)

Q. Was that a separate item?

A. That is a separate item of the owner.

Q. How long would it take you to furnish us an itemized statement of the items that make up your estimate of damage?

Mr. Wood: I think you can state it right now, couldn't you, Mr. Webb?

Mr. Bowerman: I would like to see the items.

A. It would take you long enough to call up Kern & Kibbe and ask them for it.

Q. Well, I think you would have to tell them to let me have it. I don't think they would furnish it to me without your orders. At least, I would not want to ask them to.

A. I don't know whether that is within my power, unless there is an order out.

The Court: Well, I will make the order. You go get it. You can phone to the office now and get it and go on with the case. Step down and go to the telephone around here.

Mr. Bowerman: Mr. Webb?

The Court: Yes.

Mr. Wood: May he use your telephone?

The Court: Yes. Take him in my chambers and shut the door. Get him a pencil and paper.

(Witness excused.) [145]

The Court: Call your witness, Mr. Fulton.

Mr. Fulton: Mr. Christensen.

CYRUS C. CHRISTENSEN,

was thereupon recalled as a witness in behalf of the Libelants and, having been previously sworn, further testified as follows:

Direct Examination

By Mr. Fulton:

Q. How long have you been familiar with and navigated the waters in the Pacific Ocean in the vicinity of the Columbia River?

A. Well, practically all my life. I was born down there at Astoria?

Q. Have you deep sea boated? A. Sir?

Q. Have you been deep sea navigating?

A. Yes.

Q. How long is that?

A. Well, I have had—the last time I have had my own boat four years, and before that—well, quite a few years ago I had my own boat; maybe about fifteen years ago I had a boat there for a few years, too, of my own.

Q. Just tell the Court how many years' experience you have had in deep sea fishing out of the Columbia River.

A. Well, there were times I didn't have my own boat. I have been fishing off and on with other boats practically all my [146] life.

Q. The record don't show how old you are. Now please tell us in years, Mr. Christensen. Approximately twenty years or what?

A. Well, I would say twenty years. I will say more than that. I am forty-three years old.

(Testimony of Cyrus C. Christensen.)

Q. How old were you when you started going to sea?

A. About ten years old, I guess; I used to go out with my dad trolling.

Q. All right. Are you familiar with the sets of the currents on Peacock Spit, and so forth and so on? A. Well, I know the Spit quite well.

Q. What is the fact? What way does the current set there, if you know?

A. Well, on different times of the year it sets in different.

Q. Say in July, the 25th, 1945?

A. Well, on the different tides? On the south side it is running, on the south jetty it usually runs more south there, but then right out in the river it usually goes out west.

Q. Isn't there a northern set there?

A. Yes; there is on the north side, through Peacock Spit.

Q. And you say you have been familiar with these waters ever since you were about ten years old? A. I have.

Q. Do you consider it—in your opinion is it a hazard to bring in a sunken vessel or a foundered vessel, a water-logged [147] vessel, whichever may be the proper word to use in reference to describing the condition of the Melody, to tow that in from the sea into the Columbia River at night, with three vessels in the tow? Do you consider there is any hazard in connection with that tow?

A. Yes, there is.

(Testimony of Cyrus C. Christensen.)

Q. Now just in your own words tell the Court in your opinion what hazards are presented, both to the salvaged vessels and the salvors themselves?

A. Well, of course it all depends on the weather, too, but a boat in a sunken condition might go clear down. Usually most boats when they sink or fill up with water they will usually go to the bottom. Well, when a boat is towing one, having a line on it, it might still sink, and then you have a line on there and it might pull the other boat under—the boat that is towing.

Q. In other words, it is your thought that if the Melody had sunk out there there would have been an opportunity, or a possibility of it fouling your wheel?

Mr. Wood: No, he hasn't said that at all.

Mr. Fulton: Q. Is that what you mean?

Mr. Wood: I object to that question. It is most leading. He has not said that, or intimated it.

Mr. Fulton: Well, that question may be subject to that objection. [148]

Q. What, in your opinion, are the possibilities that might happen in the event the Melody would sink in the vicinity of the waters of Peacock Spit there? What are some of the possibilities happening?

A. Well, most boats in that condition do sink.

Q. Yes.

A. My boat would sink if it filled up with water.

Q. I know, but I say what, if that Melody had sunk coming in there in that vicinity of the waters

(Testimony of Cyrus C. Christensen.)

of Peacock Spit at night, under conditions of the incoming tide—you see there is a northern set there—what if the Melody had sunk? Would there be a possibility of the wheel of some of the salvaged vessels being found getting into difficulty?

A. Well, the line would pull down and the boat towing would have that line connected to that boat and you can't always tell what would happen. That is hard to say.

Q. Were there any other hazards that you can conceive of? A. You mean in towing?

Q. Yes; bringing the tow into the Columbia River from outside, passing the water of Peacock Spit. I am just asking you if there are any hazards there—if you consider them as any hazards in making the tow at the time.

A. Well, at that time you had to figure out the tide and keep off of the breakers, and so forth. If you don't, why, you go into them. [149]

Q. All right, Mr. Christensen. Mr. Christensen, did I ask you whether or not in your opinion—ask you whether or not the Melody sunk any lower in the water from the time you arrived there and the time you left? A. It looked like it, yes.

Q. What did you say?

A. I say, it looked like it from a distance, before we got up to it.

Q. But I mean after you got alongside of the Melody, got close enough to actually observe the actual condition, and the time you left with the tow or got the tow under way, in your opinion did the

(Testimony of Cyrus C. Christensen.)

Melody settle any lower in the water? That is the point.

A. I didn't notice after we got there, but on the way out I did.

Mr. Fulton: That is all.

Cross Examination

By Mr. Wood:

Q. You were actually on the Stampede II, weren't you? A. Yes.

Q. You are one of the Libelants in this case?

A. Yes, sir.

Q. What was the actual condition of the weather and tide when you got to the Melody?

A. It was an ebb tide.

Q. Half ebb, wasn't it? [150] A. Yes.

Q. A smooth tide? A. Quite smooth.

Q. How was the breeze, if any?

A. Oh, it wasn't blowing very hard.

Q. No. Now how long after that did the tide change?

A. Oh, I would say about three hours.

Q. That would be about six o'clock, then? It would be about slack tide, would it? A. Yes.

Q. And that is when you were doing your towing, isn't it? A. Yes.

Q. And at slack tide with no particular wind there is no appreciable strong set toward Peacock Spit, is there?

A. Well, there is always a current out there.

Q. I have been in cases with wrecks down there before this. The strong set toward Peacock Spit

(Testimony of Cyrus C. Christensen.)

is on an ebb tide when there has been a northerly wind blowing up the Coast for a couple of days; isn't that so? A. What is it?

Mr. Wood: Read it to him.

The Witness: Well, there wasn't any northerly wind.

Q. I mean the wind blowing from the south towards the north.

A. Well, you don't call that a northerly wind.

Q. Well, I used the wrong word then. When the wind is blowing, [151] say, from the southwest.

A. Well, then that is a southwest wind.

Q. A southwest; that is right; and it sets up a current up the Coast, doesn't it?

A. Wind don't set up current.

Q. You don't agree with that?

A. No.

Q. Well, I think you are wrong on that. Anyway, when a southwest wind is prevailing and an ebb tide, that is when the set toward Peacock Spit is strong; isn't that true?

A. The wind don't set the tide any.

Q. Isn't that true? Answer the question.

A. I still don't get your question.

Q. Well, I will ask you again. On an ebb tide and a southwest wind, especially if it has been blowing for a couple of days——— A. Yes.

Q. ——that is when you get the strong set toward Peacock Spit, isn't it?

A. Why, up on top of the water, yes.

(Testimony of Cyrus C. Christensen.)

Q. Well, do you get any strong set toward Peacock Spit at a slack tide with no wind?

A. Oh, there is still a little tide in there.

Q. I am asking you about a set toward Peacock Spit. Is there any appreciable strong set toward Peacock Spit when the tide is slack and there is no wind? [152]

A. There is still tide in there, yes.

Q. I am not talking about tide; I am talking about the set toward the Spit. Can't you answer that question?

A. I still don't quite understand you.

Mr. Wood: All right. You can't answer it?

The Witness: No.

The Court: That is all.

Mr. Wood: That is all.

(Witness excused.)

Mr. Fulton: Mr. Webb may come back.

KENNETH ALBERT WEBB,

was thereupon recalled as a witness in behalf of the Respondents and, having been previously sworn, further testified as follows:

Further Cross Examination

By Mr. Bowerman:

Q. You have the itemized statement of the items entering into your estimate of damage?

A. The owner of the shipyard will have the itemized statements up in my office sometime today.

(Testimony of Kenneth Albert Webb.)

I have his total bill here now, the figures on that, but I could not write his itemized statement in there very well without a stenographer or somebody to take it.

Mr. Bowerman: Well, until that is here I guess, your Honor, there is no use to continue with the witness. But you will [153] bring it up when you get it?

A. Yes. You can have it if I am not here. If I am not in town I will have it sent up when I get it.

Q. Are you going out of town today?

A. I expect to go down to that Oregon Shipyard just the minute I get away from here. I have got an awful big loss down there by fire.

Q. Well, I don't want to interfere with anyone's business unnecessarily.

A. Well, the total bill, if it will help you, and this includes the engine, you know, and all the bills the shipyard paid, is $6164.45.

Q. Six thousand one hundred——

A. And sixty-four point forty-five.

Q. Sixty-four forty-five.

A. That includes the hauling out, belt A, launching, and nails paid, and repair bill on the engine, and calking and everything else.

Mr. Wood: What makes up the difference between that and the $7500?

A. You have the tow bill, $234——

Mr. Bowerman: Q. How much was the tow bill?

The Court: Go slow.

(Testimony of Kenneth Albert Webb.)

A. The tow bill is $234.21.

Mr. Bowerman: Q. That is Mr. Cherry's company? [154] A. Yes, sir.

Mr. Bowerman: O.K

The Witness: The ones for supervision $257.

Mr. Wood: That is that item you spoke of as owners' wages before?

A. Yes, they represent the owner. Radio Laboratories $14.62. E. Beebe $66.60.

Mr. Bowerman: What was that, do you remember?

A. I don't know. I would not have any idea until I looked it over, and it seems as though it was Columbia River Salmon, miscellaneous; that is, telephones and so on, and garage $146.37.

Mr. Bowerman: Thirty-seven?

A. Yes, sir. The bill, to help you separate that from the Mack Truck and other miscellaneous bills on the bilge pump and fire pump, amounted to $3314.22. That should be subtracted from the bill of $6164.

Q. Did you say fire pump and bilge pump?

A. It is fire and bilge pump, yes; miscellaneous pumps they have there on the boat, gasoline pumps.

Q. I don't think I quite followed you, Mr. Webb. Tell me that over again. I don't get the significance of it.

A. I said the Mack Truck Company, and the other miscellaneous bills on other engines, which is bilge pump and blige or bait pump, fire pump,

(Testimony of Kenneth Albert Webb.)

whichever you want to call it, and that [155] amounted to three thousand three hundred——

Q. Three thousand three hundred and what?

A. And fourten dollars and twenty-two cents. That is to be deducted from Kern & Kibbe's bill of six thousand some odd dollars, because Kern & Kibbe shipyard paid for it.

Q. This would be due to the shippers and——

A. Just to machinery and the equipment, yes.

Q. Yes; machinery and the engine, the pumps, and the like of that? A. Yes.

The Court: Make all that?

Mr. Bowerman: Make all that.

The Court: And that is their bill to Kern & Kibbe?

Mr. Bowerman: Yes.

Q. How much of that is for damage to the engine?

A. You want me to give it to you from recollection, without the figures? Q. Yes.

A. It is a little over $1800 to the engine alone. That is to be checked later.

Q. Well, in your opinion, that is substantially correct? A. Yes, sir.

The Court: Did you finish with that difference between the sixty-one hundred and the seventy-five hundred? You didn't get all of those items in that made up that? [156]

A. I think so, sir. I think they are all in there. I am not sure.

(Testimony of Kenneth Albert Webb.)

The Court: There is fourteen hundred dollars there.

A. Oh, that might be on, well, I don't know. Then one is probably on the radio, direction finder, and the like of that.

The Court: What did those items total, so long as we are getting up to it? What did those items total? Roughly you gave them there. It sounded to me like they were under a thousand dollars. One was $234.

A. No. They total $7527.24, according to my figures.

The Court: Check. I am talking about the $1400, the difference between Kern & Kibbe's bill, and the——

A. Oh, between the thirty-three fourteen and the sixty-one sixty-four?

The Court: No.

Mr. Wood: I think, your Honor, part of the apparent discrepancy is in the Beebe Company's bill. I think the witness said something about sixty-six dollars.

The Witness: $666.50.

Mr. Wood: Oh, six hundred sixty-six? It didn't sound like that over here.

Mr. Bowerman: I have got sixty-six. That makes up a lot of the difference. That brings it up to——

The Court: That does it.

The Witness: The total amount is $7527.24.

Mr. Bowerman: No. We were—I was, at least,

(Testimony of Kenneth Albert Webb.)

trying to get the difference between Kern & Kibbe's $6164.45 and $7500, or whatever it was. How much did you say you make all of those bills?

A. $7527.24.

Q. Total. What was it you said that Columbia River Salmon Company's bill was for?

A. Oh, there was telephoning in there, and garage, and I would have to look over the books to get all of that myself.

Q. Now did you ever pay Mr. Wuori for phoning in from out in the ocean there, some bill for telephoning? A. Sir?

Q. I ask you if you ever paid Mr. Wuori for some telephoning he did when he was out in the ocean bringing this boat in?

A. I have had nothing to do with this boat until I seen it——

Q. You are not answering the question.

A. Yes; I am trying to answer it.

Q. I asked you if you ever paid Mr. Wuori.

A. I don't know Mr. Wuori.

Q. Did you have to pay any expenses for bringing the boat in?

A. I wasn't interested in the boat until I found her at the dock at Astoria. That is where my interest took place.

Q. Just answer the question. Did you investigate at all to see whether there was any expense in bringing it in from the ocean? [158] A. No.

Q. Or who brought it in? A. No.

Q. You just started with the boat at the dock?

(Testimony of Kenneth Albert Webb.)

A. I started with the boat at the dock.

Q. Yes. If the boat had stayed out in the ocean you would have had to bring it in?

A. If the boat had remained in the ocean I would have declared her a total destructive loss and it would have been a lot easier for me.

Q. Yes; and then you would have paid the full policy? A. Yes.

Mr. Bowerman: That is all.

Mr. Wood: You have to get these bills and bring them in——

The Court: This is enough detail, isn't it? This is all detail?

Mr. Bowerman: I would like to ask one more question.

The Court: I mean, you don't have to hold him up any longer, do you? This is enough detail.

Mr. Bowermna: If counsel is willing, and it will accommodate the witness, I will be glad to take Kern & Kibbe's figures.

The Court: Yes. Do we have to write it up?

Mr. Bowerman: I will ask one question.

The Court: Aside from that, one question——

Mr. Bowerman: I am willing. [159]

The Court: He can go back without writing it up?

Mr. Bowerman: I would like him to confirm the figures.

The Court: All right. But he won't have to stay?

Mr. Bowerman: No, he won't have to stay.

(Testimony of Kenneth Albert Webb.)

Mr. Wood: You go ahead.

Mr. Bowerman: Q. You say the defendant's vessel was worth $20,000, according to your formula?

A. Yes, sir.

Q. And that is what you insured it for?

A. As the underwriter's surveyor I do not know what the boat is insured for. As the surveyor——

Q. Do you know, Mr. Webb, what the policy was for? A. I have never seen the policy.

Q. Don't you know, as a matter of fact, what the policy was?

A. From the owner I do, yes, but that is——

Q. Yes; and the policy was just exactly what you say the boat was worth, wasn't it?

A. I don't think so. I think it is under that.

Q. How much?

Mr. Wood: The owner will testify to that.

Mr. Bowerman: O.K.

Mr. Wood: It is hearsay, so far as the witness is concerned.

The Witness: It is only lip service.

The Court: Now you go on.

The Witness: Where do you want me to send that? [160]

The Court: To the Clerk.

The Witness: To the Clerk of the Federal Court. All right. I will get somebody to bring it up. You can pick it up at my office and bring it over.

The Court: Mr. Webb, we all thank you. I haven't seen you for some time.

The Witness: No, you haven't.

(Testimony of Kenneth Albert Webb.)

The Court: Hurry up, Mr. Fulton. I want to hear the other side of this.

Mr. Fulton: Pardon me.

The Court: I say, hurry up.

Mr. Fulton: O. K.

(Witness excused.)

CHARLES WUORI,

one of the Libelants, was thereupon recalled as a witness in behalf of the Libelants and, having been previously sworn, further testified as follows:

Direct Examination

By Mr. Fulton:

Q. Mr. Wuori, in your libel please explain to the Judge the position of Peacock Spit? Are you pretty familiar with that area in there?

The Court: What area?

Mr. Fulton: Peacock Spit.

The Court: Well, I am, and everybody else is. I went [161] down on the Harvest Queen.

Mr. Fulton: Q. In your own words, Mr. Wuori, explain the habits of Peacock Spit in reference to bringing the tide in there at high tide currents, possibilities of hazards. You might or you might not explain that to the Court.

A. Peacock Spit is situated on the north side of the Columbia River channel. That is north when you enter from the lightship to the jetties.

Q. Is it west of the west end of the jetty, or how does it lie in reference to the jetty?

(Testimony of Charles Wuori.)

A. It is parallel to the channel. The channel is practically southwest and northeast.

Q. I mean this Peacock Spit, is that west of the jetty?

A. Well, it starts from the jetties and then it runs as far as No. 1, a west southwesterly direction.

Q. How large an area is it east and west?

A. East and west?

Q. The approximate length of it?

A. Oh, well, offhand I would say three or four square miles.

Q. Is that a dangerous area? A. Yes, sir.

Q. Just explain why it is dangerous.

A. Well, anybody knows, who knows the history of the marine navigation, knows there has been hundreds of ships sunk on the Peacock Spit in the rough seas and many lives lost. [162]

Q. And what peculiar hazard is there, currents on anything that causes that, or what?

A. The currents always set, regardless of tide, westerly and northerly.

Q. Northerly and westerly?

A. That is on the north side of the channel. On the south side it stays southerly.

Q. Coming in there at night? A. Yes.

Q. How far did you pass off Peacock Spit at the time of that, approximately?

A. When we came right in the channel we managed to miss Peacock Spit entirely. We kept Peacock Spit, oh, west—west or north side—the west northwest, when we entered into the channel.

(Testimony of Charles Wuori.)

Q. What possible hazards would there be in the event the Melody had sunk right in that area?

A. Well, if we had sunk just of a sudden we might not have been able to have released our tow-lines soon enough. They might have been hit at the banks or whistler buoys——

Q. Suppose your line——

A. ——which has happened at several times, even if the wheel didn't have anything on it at all.

Q. Well, what would happen if the wheel had fouled—I mean if the Melody sank and was unable to release your line on account [163] of the wheel fouling, or anything else, what was the possibility of happening?

A. Well, there is a possibility we might have drifted on the Spit, through Peacock Spit, which at the time was rough but at the night time you can't tell if it is rough or not.

Q. Well, all right.

A. Without the practice for this we might have drifted on the banks, and so forth.

Q. Get back to the fishing catch and the value, and your loss in fish. Can you tell the Judge, in your own words, what, in your opinion, was the cost to you in lost fish by virtue of being held up, making this tow and making your repairs afterwards? Just tell the Judge in your own words about that.

A. We lost at the time fishing—we had lost time fishing—we lost about—we could have made—well,

(Testimony of Charles Wuori.)

the time we lost we could have made about a trip and a half.

Q. What is a trip and a half worth to you?

A. Well, the trip shortly after we towed the Melody, and that is the first trip we had, about three thousand dollars.

Q. What would a trip and a half be worth? What would be a fair estimate of a trip and a half?

A. About $5000.

Q. About $5000? A. Yes.

Q. What cost and expense were you put to by virtue of making [164] this salvage?

A. I can't remember until I look on the book, but I think there may be three and a half to four hundred dollars.

Q. That includes your cable? A. Yes.

Q. And you have got it itemized?

A. I have got it all itemized, yes.

Q. You say the value of the Stampede was thirty-five thousand?

A. Yes. I could have got thirty-five thousand in there after the fishing season for her.

Q. You have had her valued? A. Yes.

Q. Since the accident?

A. No. It was before, I think.

Q. All right. The vessel you say was worth thirty-five thousand, and you were offered that?

A. But my vessel is only twenty-one tons and the Melody was twenty-five net tons.

Q. Was the Melody in your opinion a more valuable boat than yours?

(Testimony of Charles Wuori.)

A. According to the tonnage it is.

Q. Yes. Well, I am asking you, as a matter of fact, is it is heavy construction, and so forth?

A. I think so.

Q. Just as good a boat as yours? [165]

A. Yes, sir.

Q. Newer, besides? A. Newer, yes.

Q. Now, taking into consideration the hazard to your vessel, and your equipment, and your loss, and injury to your person, what would you say would be a fair share of the value of the Melody to compensate you and your members of your crew for the services you performed?

A. I consider one-third of its full valuation.

Q. You figure that, you mean, in addition?

A. In addition to what we lost for fishing and the cargo which we lost, to replace.

Q. In other words, putting a leading question, one-third you figure that should be awarded to you—the libelants here—for the hazards they took, in addition to their loss of fishing? A. Yes.

Mr. Fulton: That is all, your Honor.

Cross Examination

By Mr. Wood:

Q. How long was your towline? One hundred fathoms, you said, didn't you?

A. Well, with three hundred fathoms apiece, and there was two of them. We lost one.

Q. How much of your line did you have out?

A. We lost one. [166]

(Testimony of Charles Wuori.)

Q. No, no. When you were towing the Melody how much line did you have out?

A. Approximately one hundred fathoms. I could not tell what.

Q. It was hemp line, wasn't it?

A. It was plow steel half-inch line.

Q. Half-inch line. How long was your ship? Wasn't it fifty feet over all?

A. Fifty feet over all.

Q. The Melody was only forty-six feet, wasn't it? A. May I ask you something?

Q. What?

A. What do you mean? You get these figures off of the documents, or you go into over-all length?

Mr. Wood: Never mind. I won't go into that. I will go into that by another witness. That is all.

(Witness excused.)

Mr. Fulton: That is our case, your Honor.

RESPONDENTS' EVIDENCE

The Clerk: What is your name, please?

Mr. Rustad: Thomas Rustad.

THOMAS RUSTAD,

the Respondent, was thereupon produced as a witness in behalf of the Respondents and, having been first duly sworn, testified as follows: [167]

Direct Examination

By Mr. Wood:

Q. Mr. Rustad, you are the owner of the Melody, aren't you? A. Yes, sir.

(Testimony of Thomas Rustad.)

Q. Your home is up in Alaska some place, is it not? A. Yes, sir.

Q. What town?

A. Petersburg, Alaska.

Q. And you had had the Melody built only during this last year, had you not? A. Yes, sir.

Q. In what yard was she built?

A. Chambers Boat Company, in Seattle.

Q. She was a new boat, wasn't she?

A. Yes, sir.

Q. What did you pay for her?

A. All? Over all, or do you mean——

Q. Everything.

A. Everything? That was twenty thousand would cover it.

Q. You showed me just now—I will pass it up to you—your contract with the yard for the hull. Have you any reason for keeping that? If not, I might introduce it in evidence.

A. Well, I would like to have it back.

The Court: He can have it back later.

Mr. Wood: Well, all right. I will introduce it in evidence. [168] It is a contract for the construction of the hull, isn't it?

A. Yes, sir, the completed hull.

Q. What?

A. The completed hull, without the engine.

The Court: It is admitted.

Mr. Wood: Q. And it shows what price for the hull?

A. Yes, sir.

(Testimony of Thomas Rustad.)

Q. What price?

A. Ten thousand seven hundred.

The Court: Let's get it marked, please. He will give it right back to you.

(The contract so offered was thereupon marked Respondents' Exhibit 3.)

RESPONDENTS' EXHIBIT No. 3

January 1, 1945.
Seattle, Wash.

This is to constitute an agreement between The Chambers Boat Co., contractor, and Thomas B. Rustad, purchaser, for the construction of a forty-six (46) foot trolling boat according to specifications as drawn up by Edwin Monk, architect, and for an agreed price of $10,700.00, which is to be paid by purchaser in accordance with the following schedule:

First at date of signing contract.....$2,500.00
Second, at completion of framing of vessel..$3,200.00
Third, at completion of planking of vessel..$2,500.00
Fourth, at date of acceptance of vessel by purchaser $2,500.00

THOMAS B. RUSTAD,
Purchaser.

CHAMBERS BOAT CO.,
Contractor.

By JAMES G. CHAMBERS,
Partner.

(Testimony of Thomas Rustad.)

Kern [Cut] Kibbe
Telephone: University 3685
8607 N. Bradford Street, Portland 3, Oregon
August 22nd, 1945

Tom Rustad to Kern & Kibbe

Repairs to D. V. "Melody" at our boat and barge yard in St. Johns as per letter of authorization from Robert O. Fleming Company and instructions of Mr. Webb:

Haul out	$ 47.00
Lay time	140.00
Labor	2,380.30
Crane rental	36.52
Service truck rental	48.00
Oakum	9.75
Cement	2.50
Plywood	1.50
Canvas	1.25
Lumber	2.70
Hardware, nails, etc.	15.00

The following invoices paid by us

Mack International Truck Co.	
(Repairs to engine)	$1,854.64
(Repairs to instruments)	66.55
Oregon Marine Supply Co.	
(Compass, flares, etc.)	44.45
(paint)	46.17
R. R. Poppleton	
(Repairs to electric motor)	19.08
(Repairs to generator engine)	12.83
(Repairs to generator and motor)	64.31
(Repairs to pump motor, etc.)	56.50
M. Parks (maps)	18.25
Dohrman Hotel Supply Co. (dishes)	12.01
A. Anderson (Pots, pans and misc.)	21.53
W. N. Burley (Lettering on boat)	9.00
Carbon Dioxide Extingisher Co.	
(Repair extinguishers)	5.50
Enterprise Planing Mill (new door)	10.75

(Testimony of Thomas Rustad.)

W. R. Grasle Co. (complete overhaul of all electric wiring and apparatus, new batteries, etc.)	969.53	
Union Oil Co. (fuel and grease)	49.88	
(fuel)	53.24	$3,314.22
Add 5% handling charge on $3,314.22		$ 165.71
Total		$6,164.45

Mr. Wood: Q. Ten thousand seven hundred for the hull, and how much did the engine cost?

A. Fifty-six hundred installed.

Q. Then what is the difference between those two figures and the twenty thousand? How is that made up?

A. That makes up for the radio, the photoelectric pilot and all accessories, miscellaneous aboard the boat.

Q. So the total cost to you of the boat and her accessories was $20,000? A. Yes, sir.

Q. There were some, and I don't know that it makes a lot of difference but there was some question asked of Mr. Webb, which [169] he could not answer, and what was the amount of the insurance on her? You must know that. What was it?

A. Twenty thousand.

Q. Twenty thousand. Insured for her full value?

A. For her full value.

The Court: He paid twenty thousand for everything. The insurance covers something less than that?

(Testimony of Thomas Rustad.)

Mr. Wood: I guess that is right, yes.

Q. On this trip on which the disaster occurred, was that your maiden voyage on this boat?

A. Yes, sir, maiden fishing voyage.

Q. Yes. And where were you in the ocean when the boat tipped over?

A. I estimated approximately six miles off of north headlight.

Q. Which direction, due west or north?

A. Due west.

Q. Which way? A. Due west.

Q. Due west. What was the condition of the sea and weather when you went over——

A. I would say moderate.

Q. ——on the coast her and tipped over?

A. As far as I can determine, and from what I could gather from the two fellows on watch, we evidently struck a tide rip.

Mr. Bowerman: Struck a what? [170]

A. A tide rip.

Mr. Wood: Q. A tide rip?

A. And in which we encountered a freak wave, which I don't know if all of you know what it is. It is two waves at once, the first one hitting us and listing us over to the starboard side and the second following and tilting us still further, and then from there on she just continued.

Q. About what time of day was this?

A. My watch had stopped at ten minutes to one.

Q. This was July 24th? A. 24th.

Q. You had left Astoria on the 22nd, hadn't you?

(Testimony of Thomas Rustad.)

A. Yes, sir.

Q. Now when she tipped over what did you men do, you and your crew?

A. Well, as to the other fellows, I have no idea what they did. Myself, I was in the galley with the cook, and he is the only one that I could tell what he did. He stepped through the door but she was——

Q. I don't mean all that in detail. I mean, you and your crew left the ship, didn't you?

A. Yes, sir. That is, we got into our life raft.

Q. That is what I mean; rubber life raft?

A. Yes, sir.

Q. And what direction was the wind blowing from, such as [171] there was?

A. It was a light southwest breeze.

Q. And the tide was made? A. Half ebb.

Q. That would be flowing still out to sea?

A. Yes, sir.

Q. And what was the result of the wind and tide in separating you from the Melody?

A. Being as the wind was from the southwest and the tide setting out to sea, it blew us away; that is, separated the two of us; that is, the boat and the crew from each other.

Q. How far did you become separated, do you think?

A. You mean when we finally were picked up?

Q. Yes. A. A mile and a half, I judged.

Q. After you had become separated and found you could not get back to her, then you determined,

(Testimony of Thomas Rustad.)

I understand, to go and seek assistance from the Coast Guard, didn't you? A. Yes, sir.

Q. Now how long after the capsizing was it that you were picked up by the Coast Guard boat?

A. Approximately two and a half hours.

Q. And was that the boat known as the crash boat? A. Yes, sir.

Q. And when they picked you up what did you do then with them? [172]

A. We proceeded immediately back to the Melody.

Q. And what did you find when you got back there? Before I ask you that question, how long did it take you to get back to the Melody in the crash boat?

A. I would estimate about two to three minutes.

Q. Oh, as fast as that? Well then, if I have computed the time right, you were back at the Melody between two and a half and three hours after the capsizing? A. Yes, sir.

Q. Then what did you find when you got to the Melody?

A. We found the Stampede, the boat which we know was there in the first place. We found her with a line attached to the Melody.

Q. How did you know she was there in the first place? A. We could see her.

Q. Oh, you could see her from your life raft?

A. Yes, sir.

Q. Oh, I see. I didn't wnow that. Anyway,

(Testimony of Thomas Rustad.)

when you got over there you found the Stampede with a line aboard your boat? A. Yes, sir.

Q. And what was the attitude of Wuori about keeping hold of her, accepting assistance from you, or what was he going to do?

Mr. Bowerman: Just a moment. If your Honor please, that is calling for a conclusion. I suggest the propriety of asking him what happened or what was said. [173]

The Court: He may give the details.

Mr. Wood: Q. What was Mr. Wuori's attitude?

Mr. Bowerman: I object to that as calling for a conclusion.

The Court: He may give the detail, tell what was said back and forth.

A. There wasn't much said at all, as we could tell, when he first came up there, that it was evident that the Stampede was intent on salvage.

The Court: Now wait.

Mr. Fulton: Strike that out.

The Court: Wait a minute now. You don't need to take time to do that. I know how to do that. We want to know what was said. We don't want to know what was thought and how things looked.

The Witness: Yes, sir.

Mr. Wood: Q. What was said or done, from which you gathered that opinion?

A. Well, if I can remember very much at all at that time, Mr. Wuori had not said anything at all.

The Court: Did you talk to him?

A. I talked to him with very few words; yes.

(Testimony of Thomas Rustad.)

The Court: He said he didn't know you were on the crash boat?

A. The reason he knew that, or, that is, should have known it, was that the fellow that was with me in the life raft when we [174] removed his man from the Melody told him that he had the skipper aboard the crash boat, and I was the skipper and right alongside the boat at the time.

Mr. Wood: Q. You have just mentioned the time you removed his man. Could you explain that?

A. That was the only thing Mr. Wuori asked us to do, was to take his man off the Melody.

The Court: Mr. Wood wants you, and I want you, to tell, from the time you got up there, from the time you began to talk, who it was and everything that was said, and we will draw the conclusion.

A. Well, when we arrived at the Melody Mr. Wuori asked us to remove his man. I believe Mr. Syvanen also asked—that was the man on the Melody—asked to be taken to the Stampede, which we did, and on arriving——

Q By means of your life raft?

A. By means of our life raft, yes, I and another Coast Guard man. When he arrived at the Stampede he told—this Coast Guardsman told Mr. Wuori he had the crew and the skipper, and that I was the skipper of the Melody. That is all verified, the fact I was the skipper, and Mr. Wuori just said, "Oh."

Q. Did Mr. Wuori offer to turn the boat over to you and the crash boat? A. No, sir.

(Testimony of Thomas Rustad.)

Q. He kept on his preparations for towing, did he? [175] A. Yes, sir.

Q. Did you ever have any intention, when you left the Melody, or at any time, did you ever have any intention of abandoning her? A. No, sir.

Q. Well now, after you got back with the crash boat there and Mr. Wuori had his line aboard your boat, then you and the crash boat departed, didn't you? Or did you leave the scene then?

A. We were there about between a half hour and forty-five minutes.

Q. And then what did you do? Before that did anything else happen during that half hour to forty-five minutes, except what you have told about?

A. Well, yes. Mr. Wuori asked us if we would put whatever you call it, a guard on his rope to help protect it. But we had nothing to put on, so we proceeded back to the crash boat, stood by for about half an hour to forty-five minutes, while the Captain, or the man in charge of the crash boat was calling to the Coast Guard, finding out where they were and how soon they would arrive. In the meantime——

Q Did he get in touch with them?

A. Yes, sir.

Q And they said they were right there by us?

A Yes. [176]

Q. Then what?

A. In the meantime the Stampede prepared to start towing. They had towed for about, oh, five or ten minutes. In the meantime we could see the Coast

(Testimony of Thomas Rustad.)

Guard surfboat approaching. We ran up—we started for shore at that time toward the Point Adams station, and we stopped alongside at one of the surfboats, which I would say was maybe three miles away. I don't know for sure.

Q. Three miles away from where?

A. From the Melody; and they stopped and talked for a moment, and we proceeded on our way to Point Adams and arrived there at five o'clock approximately.

Q. How many Coast Guards came out of the rescue boat—Coast Guard boat? There was a surfboat you passed? A. Yes.

Q. Then there was the Triumph, and what? Were there any others?

A. I believe there was another surfboat Two surfboats and the Triumph.

Q. Now after what o'clock by day—what time was it when you left the scene and know no more about it of your own knowledge?

A. Oh, it must have been between four and four-fifteen.

Q. And at that time the Stampede had been tow-the Melody about ten minutes and the Coast Guard was on its way out; is that correct?

A. I would judge, yes. [177]

The Court: The chafing gear; is that the word?

A. Yes, sir.

Mr. Wood: Q. Have you fished off the river there before?

A. This is my first year.

(Testimony of Thomas Rustad.)

The Court: I would like to know a little more about his life.

Mr. Wood: I would, too. Let's ask him about it.

Q. What has been your life then prior to this fishing venture? A. Fisherman.

Q. Where?

A. In Alaskan waters, Puget Sound.

Q. For what kind of fish?

A. Salmon, halibut, black cod; that is, bottom fishing, surface fish of all kinds.

Q. How long have you been doing that?

A. Since 1930.

The Court: Does he know his own boat and gear?

A. Yes, sir.

The Court: About the size of those?

Mr. Wood: I would be glad to have your Honor ask him questions along those lines.

The Court: Well, these are things very puzzling to me here, between these two men out there, old-timers, seafaring men.

Mr. Wood: Yes. [178]

Q. Well, had you owned your own boat before this?

A. Yes, sir. I had another boat in Alaska.

Q. And have you owned more than one boat before this? A. No, sir.

Q. How long did you own this other boat before this one? A. Since 1935.

The Court: What is your age?

A. Thirty-two.

The Court: You have been to school, haven't you?

(Testimony of Thomas Rustad.)

A. Yes, sir.

The Court: To college?

A. Well, no, sir.

Mr. Wood: Q. Where did you go to school?

A. In the State of Washington.

Q. And whereabouts there? Where did you live?

A. At Poulsbo, Washington.

Q. How high did you go through school or college?

A. High school and through business college.

The Court: Have you ever been wrecked before?

A. No, sir.

The Court: You never lost a boat or had anything like this happen? A. No, sir.

The Court: Nor ever been wrecked yourself? I mean, when you had to go out in a small boat? [179]

A No, sir

The Court: You had never been in a marine accident? A. No, sir.

The Court: Were you ever in on the other end of one? Have you ever rescued a party?

A. There has been several instances when we have helped boats out that have been broke down; yes, sir; in general. That is all.

The Court: You know about the rules of the sea generally, of the right to collect ships in tow and make claims for them?

A. We have never bothered with them, sir. We have just helped them out.

The Court: That didn't just answer my question. Maybe you don't know. Maybe you have.

(Testimony of Thomas Rustad.)

A. I just didn't quite understand it.

The Court: That is all right. Mr. Wood.

Mr. Wood: Q. I think the Judge meant, did you know the rule of the sea that entitles a rescue ship to make a salvage claim?

A Well, yes and no. It all depends on whether you abandon the boat or not.

Q. I don't think that is true, but that may be your idea, and then, of course, it may be all right for you to hold it.

A. Marine law is sort of hard to understand.

The Court: Excuse me, sir. You didn't make any protest [180] at what this Wuori was doing? You didn't say anything to him one way or the other. Did you have any reason for that? I can understand you might have been frightened. Anybody would be with what you had just gone through. But you didn't talk to him at all about what you were doing. He had taken hold of your boat. You said you hadn't abandoned it. You didn't approve of what he did. You didn't protest. What was the idea? What was the situation? Did you think the boat was about to sink unless he hung onto her? Did you think it wasn't going to sink or what did you think? Or were you up in the air? That might have been the case.

A. As I said before, we could see very plainly he had only one idea in mind; that was my thoughts; and I could see there wasn't any use of approaching him in any way in telling him we hadn't abandoned the boat. We thought he was wrong. We

(Testimony of Thomas Rustad.)

wanted him to let go and for the crash boat to take over, which they would. That was the principal reason for us getting into our life raft. That was to see if there was a secure place of fastening a line to our boat, and when we could not find any secure place, that is like a cleat or anything substantial to stand a tow of it, we reported that to the skipper and he says, "Well, really there is nothing we can do, as long as the Stampede has a line on it now, unless he asks us to," and that is the reason I never bothered to have any conversation with Mr. Wuori. [181]

The Court: Now you brought it up to a certain point there. The skipper was bashful, and he said unless Wuori asked the lifeboat to take over. Why didn't you then ask Wuori to let go? That is what I don't understand.

A. Well, if you will understand, that is—I don't know. Maybe it is just human nature. You can tell by looking at a person, you can tell what he is figuring on, in the first place, and know his answer before he answers.

Mr. Wood: Q. Well, at any rate, whether you were right or wrong, the reason you didn't protest was because you felt it would be useless?

A. Yes, sir.

Q. Now I will come to the next period about which you have any personal knowledge, and that is after you were ashore. How much fish was aboard the Melody when she was ashore, that was saved? How much fish was saved?

(Testimony of Thomas Rustad.)

A. Seven thousand pounds, three and a half tons.

Q. And what became of that?

A. It was delivered to the Columbia River Salmon Company.

Q. At your instance? A. Yes, sir.

Q. And what price was realized for it?

A. 19½ cents a pound. In other words, I think it is three ninety a ton.

Q. Have you calculated out the arithmetic, and can you give [182] us that in dollars and cents?

A. Well, I have their statement for it.

Q. That is all I want to know. How much did the fish bring? A. It is $1368.51.

Q. There was some question made in the earlier part of the case about the amount of ice on board the Melody. Can you tell us anything about that?

A. At the time of the accident or previous?

Q. Well, when you left Astoria first?

A. We took six tons of ice.

Q. How much would you estimate you had then at the time of the accident?

A. Oh, in the neighborhood of five tons.

Q. You have heard the other testimony, have you, about how much the Melody was submerged?

A. Yes, sir.

Q. Have you anything to add to that?

A. Well, she wasn't—from my knowledge she wasn't submerged quite as badly as they said.

Q. What was your thought about it at the time

(Testimony of Thomas Rustad.)

as to whether she would remain afloat or whether she would sink?

A. After she had stayed up as long as she had there was no doubt in my own mind she would continue to float.

Q. You mean after she had stayed up from the time you left her until to two and a half to three hours before you got back? [183] A. Yes.

Q. Is that what you mean? A. Yes.

The Court: I don't believe he told how the crash boat happened to come for him.

Mr. Wood: Yes. I would like to know.

Q. How did the crash boat happen to come out there, if you know?

A. Well, the only thing I can tell is from what they told me.

Q. Who? The crash boat people?

Mr. Bowerman: Are they here?

Mr. Wood: It is probably hearsay. Does counsel or the Court want to hear it?

The Court: I would like to hear it.

Mr. Wood: The Court wants to hear it.

The Witness: We were at the time sighted. We were sighted by about four Navy planes coming in from Siskiyou, or some place, on their way to Astoria.

Q. Excuse me. When you say you were sighted, do you mean the life raft or do you mean the Melody? A. No, we were in the life raft.

Q. And the patrol planes sighted you?

A. Yes.

(Testimony of Thomas Rustad.)

Q. Now go ahead. A. And they—— [184]

Mr. Bowerman: Now, if your Honor please—just a minute—I submit this is not even hearsay. This is pure imagination.

Mr. Wood: This is what the crash boat people told him. The Court said he wanted to hear it.

The Court: Yes, I will hear it.

Mr. Bowerman: That is not what he was telling.

The Court: Well, he hasn't got squared off yet.

Mr. Wood: Go ahead.

The Court: You say four Navy planes?

A. Yes, sir. They sighted us.

The Court: Why don't you get right down to it? What did the crash skipper tell you as to how he happened to come to your rescue?

A. He said that these four Navy planes had spotted us and called in to the Coast Guard station, I guess it is the Coast Guard station, and reported a life raft with five men in it, and to——

The Court: That is all we need. Where is the crash boat skipper? Is he available?

Mr. Tatum: He is in Astoria, your Honor. These two men we have here we will call later this afternoon were skippers on the Triumph and the other surfboat, and the Melody.

Mr. Wood: That is all, your Honor.

The Court: You see, Mr. Tatum, you have a dispute here [185] between libelant and what has been disclosed here as to what the crash boat skipper advised was what he could do with his craft. This man says the crash boat could have taken hold

(Testimony of Thomas Rustad.)

of the boat, and was willing to do so. Libelant has testified the crash boat skipper said they were not equipped or powered, or whatever it was, to take hold of the boat; their job was just to rescue life.

Mr. Wood: I didn't look at that point, and, if necessary, I think we could get the crash boat skipper up here. It is possible—I haven't talked with them, that these other Coast Guard men may be sufficiently familiar with the crash boat to know whether it would tow or not.

The Court: I don't want to stick my nose into it now, but it makes a whole lot of difference as to the crash boat proprietor's conduct, as to whether he said they were not equipped or powered to take hold of the boat.

Mr. Wood: Yes, I think you are right. I think we should get the crash boat skipper up here, if we can.

The Court: Cross-examine. He is through.

Mr. Bowerman: May I have just a minute here, your Honor? I want to ask this witness a question and I want to be sure myself.

Cross Examination

By Mr. Bowerman:

Q. Mr. Rustad—is that your name? [186]

A. Yes, sir.

Q. What did you say the state of the tide was at the time of your accident?

A. At the time of the accident it would be approximately high tide.

(Testimony of Thomas Rustad.)

Q. Approximately high tide? A. Yes.

Q. What time was your accident?

A. Ten minutes to one.

Q. Ten minutes to one?

A. Yes. We have no way of telling, other than my watch had stopped at that time.

Q. You were down in the galley?

A. I was on deck, in the galley.

Q. The galley is on deck. What were you doing? A. I was talking to the cook.

Q. And what happened?

A. Well, the boat took a sudden ordinary roll, and on top of that we had another sudden lurch and the boat went over, and that is all.

The Court: How about that? Did it go over and then come back?

A. It started to recover itself, and before it could recover it took a second roll and went fully, that is——

The Court: It stabilized there—never came back? [187] A. No.

Mr. Bowerman: Q. Was it over on the side?

A. As far as the mast, yes.

Q. Was the mast in the water?

A. Parallel with the water.

Q. And did the hold fill up with water?

A. I wasn't there to see, sir.

Q. What was happening when you got off?

A. Well, I imagine it was.

Q. Was there anything to keep the water out of the hold? A. Pardon?

(Testimony of Thomas Rustad.)

Q. Was there anything to prevent the water going in the hold? A. Hatch pole, tarpaulin.

Q. Did that come off or stay on?

A. It stayed on while I saw it.

Q. Huh? A. It stayed on while I saw it.

Q. While you saw it. Was it on when you came back there with this crash boat?

A. I could not tell, sir.

Q. Huh?

A. I could not tell. I didn't notice.

Q. Now did it dump you into the water or did you get off in the water?

A. I had to jump through the door to get out. When I went [188] through the door I was in the water.

Q. As you went out of the door you were in the water? A. Yes.

Q. And the boat was thirty-five or more degrees, so that the mast was in the water?

A. Yes, sir.

Q. And it stayed that way?

A. It stayed at about forty-five degrees, yes.

Q. Yes. Now when you got off the boat you thought it was going to sink, didn't you?

A. We didn't know.

Q. Well, that was your impression, wasn't it?

A. We had to be safe.

Q. Well, the boat wasn't all under water, was it? A. No, sir.

Q. What did you get off for?

(Testimony of Thomas Rustad.)

A. Well, I guess it is ordinary common sense. Anybody would play safe.

Q. Yes. Now you had a rubber lifeboat or raft, or something there? A. Yes.

Q. Was that fastened to the boat or was it loose?

A. It was fastened to the side of the boat.

Q. Fastened to the boat. Who took it loose so you could get out of there? [189]

A. The two men on watch.

Q. And was that before or after you left the boat? A. It was after.

Q. And they detached this raft so it would float in the ocean? A. Yes.

Q. Were you already in the ocean when they did this? A. Yes.

Q. And there would be two more men. What were they doing? A. Two more?

Q. You had five altogether, didn't you?

A. Yes, sir. The cook was on the mast; that is, in the wreck he was on the side up out of the water, and the other fellow was in the forecastle sleeping.

Q. How did he get out?

A. Through the escape hatch.

Q. Did that leave an opening so the water would get in there?

A. In order to get out it would have to open out, yes.

Q. Yes. So that the water came into the galley, and then when this water came out of there as far as you know it went into the hold; is that right?

(Testimony of Thomas Rustad.)

A. I would think so.

Q. Yes. So it filled pretty well up with water, didn't it, too? A. Yes.

Q. Now, when you got off on this life raft where were you [190] bound for?

A. We were not bound for any place, to begin with.

Q. Well, you could have tied up to the boat and stayed there if you had wanted to, couldn't you? A. Not necessarily.

Q. I say, you could have done it if you had wished to? A. Yes.

Q. There was nothing to prevent your staying right there with the boat, was there?

A. No, sir.

Q. You had no oars and gears aboard, had you?

A. Yes, sir.

Q. What did you have? A. We had oars.

Q. You could see the shore from where you started? A. Yes, sir.

Q. Did you start for shore?

A. Not right away.

Q. What did you do?

A. We hung on for a while. We tried to stay by the Melody?

Q. What?

A. We tried to keep as close to the Melody as we could with the oars.

Q. Why didn't you stay there?

A. On account of the breeze, the tides. [191]

(Testimony of Thomas Rustad.)

Q. The breeze affected you more than the Melody? A. Yes.

Q. You drifted apart? A. Yes.

Q. Couldn't you stay there?

A. We had none of the life raft, or——

Q. You had oars; you had fishing gear around there, didn't you?

A. They were on board the Melody.

Q. If this other man could get on the Melody you could get on, couldn't you?

A. Oh, yes.

Q. You could have tied this on there, if you wanted to? A. If we had done it right away.

Q. Well, at any time, couldn't you? With the oars you could combat this little wind, couldn't you?

A. Did you ever try to operate a life raft against the wind?

Q. No. I am entirely dependent on you.

The Court: He is an uplander.

Mr. Bowerman: My seagoing has mostly been in the prairies.

A. Well, sir, it is indeed quite a job.

Q. But you did have fishing gear; you had the lines; you had other things there you could have made fast with, if you wanted to, didn't you?

A. At first, yes.

Q. But your boat was fully insured, wasn't it?

A. Yes.

Q. You were not particularly interested in the

(Testimony of Thomas Rustad.)

boat right then. You were thinking more with respect to the men, weren't you?

A. I wouldn't say I was thinking about the result. I was thinking about the men.

Q. What time in the afternoon do you think it was by this time?

A. Approximately going on two o'clock.

Q. And you think you were six miles out in the ocean? A. Approximately so.

Q. You saw that long beach up there north from the head, didn't you? A. Pacific Beach?

Q. Yes; that long beach?

A. Yes. You could see it very plainly.

Q. Did you think maybe you could float in there?

A. I didn't understand you.

Q. Did it occur to you maybe you would land in there on that long beach?

A. Yes, very easy.

Q. Was that where you were heading for?

A. That is where we were headed for. So the Coast Guard——

Q. Yes, but you had gotten away how far do you estimate?

A. We were a mile and a half from the Melody.

Q. That is your estimate? [193]

A. Yes, sir.

Q. Were you using the oars and trying to go in the direction the wind was driving you, or what were you doing?

A. When they finally sighted us we were, yes.

Q. Huh?

(Testimony of Thomas Rustad.)

A. When they finally sighted us we were; yes, sir.

Q. You were heading away from the boat at that time? A. Yes, sir.

Q. How much of the boat was out of the water when you left it?

A. We could see the boat at all times.

Q. You could see it at all times?

A. Yes, sir.

Q. And you got off the boat because you thought it was going to sink, didn't you?

A. Yes, sir. We didn't know. I didn't think so, but——

Q. I asked you what you thought when you got off. A. Well——

Q. That was your notion, the boat was going to sink, and you left the boat with that in your mind?

A. Not in our mind, sir.

Q. Huh? A. Not in our mind.

Q. Yet you had it insured for all it cost you, you say? A. Yes, sir. [194]

Q. And this event occurred and you pulled out and left it? That is the fact, isn't it?

A. We just——

Q. Just answer that question.

Mr. Wood: He is trying to. Give him a chance.

Mr. Bowerman: Just a minute. Now I am cross-examining this witness, unless the Court has a different view. I would like to have the witness answer the question; then if he has something else to say that is his privilege.

(Testimony of Thomas Rustad.)

The Witness: The question again.

Q. Why, you can say whether you did pull out and leave the boat and you were running away from it; is that right? A. I object to that, sir.

The Court: Well, that is not your job. That is Mr. Wood's job.

Mr. Wood: I will object for him.

The Court: You just turn around the other way now.

The Witness: I didn't leave the boat right at first, sir.

Mr. Bowerman: I will go over that again, if you like.

Q. How long did you stay there by the boat?

A. Approximately an hour.

Q. How close did you get to the boat?

A. We kept drifting further and further away from her.

Q. Didn't you use the oars at all?

A. Yes, sir. We tried to stand by her but it was impossible. [195]

Q. You could not go back to her?

A. No, sir.

Q. When you say you were drifting away from her, did you make any immediate effort to stay by it?

A. We tried all that time during that hour, sir, but we saw it was impossible.

Q. What were you going to do if you stayed right there with the Melody, after you got off her?

(Testimony of Thomas Rustad.)

A. Well, I don't know. We just would have to stay there, I guess.

Q. This crash boat, that is a very speedy boat, I understand? A. Yes, sir.

Q. And where did it come from—that station up there on the beach?

A. I think it is stationed at Point Adams.

Q. And that would be on the Columbia River?

A. Yes, sir.

Q. Do you have one of these tide tables so you have any knowledge of what the state of the tide was at that time? A. Yes, sir.

Q. Isn't it a fact that the tide was high on the 24th of July last at 1:42?

Mr. Wood: At what point, please, counsel; Astoria or where?

Mr. Bowerman: Well, there is a rule here; that is what I was looking up when the Court asked me to go ahead with my [196] cross examination, and the nearest point I can find here is the mouth of the river there, and this seems to be what it is at 1:42 p.m. Do you know that?

A. I can't doubt the book, sir. That is what they are for.

(The Bailiff here passed the book to the witness.)

The Witness: This is Astoria and vicinity.

Q. How is that?

A. This says Astoria and vicinity.

Q. Well, you will find a list of towns in there, how much to subtract and add to all of them.

(Testimony of Thomas Rustad.)

A. It still says "Tide Tables for Astoria and District."

Q. Yes, I understand.

A. That is in the city itself. That is at the waterfront of Astoria.

Q. What is the nearest point to where you were that is in that book? A. That is the nearest.

Q. What?

A. That is the nearest, and then there is an hour's difference, you will notice.

Q. There is a list of towns given there, isn't there, with a calculation as to what you are to subtract or add? A. Yes.

Q. All right. What is the nearest place given there to where [197] you were?

A. You look it up.

Q. Well, can't you find it? A. Yes.

Q. Well, what is it?

A. Do I have to do that?

Mr. Wood: Tell him if you can.

Mr. Bowerman: Q. You have had experience before in court, have you?

A. Pardon.

Q. Have you had experience in court before?

A. No, sir.

Q. Have you been a witness before?

A. No, sir. (Pause). Are you waiting for me to answer, or what?

Q. Yes.

A. You are supposed to subtract an hour and ten minutes, entrance north jetty.

(Testimony of Thomas Rustad.)

Q. Were you at the north jetty?

A. Approximately. Six miles out, sir, general location.

Mr. Bowerman: May we introduce that book, with the consent of counsel? It is put out by the Public Council.

Mr. Wood: Yes.

The Court: Admitted.

(The book, entitled "Official Tide Table, Astoria and Vicinity," etc., so offered and received, was marked Libelants' Exhibit No. 4.)

LIBELANTS' EXHIBIT No. 4

All Tide Standard Time—For War Time Add One Hour

OFFICIAL TIDE TABLE

Astoria and Vicinity

The Beebe Company—Established 1884

Astoria - Portland

THE BEEBE COMPANY

Tide Tables for Astoria District
JULY

HIGH—		A. M.		P. M.	
Date		h. m.	ft.	h. m.	ft.
1	Sun.	5:05	7.6	6:25	7.7
2	Mon. ☾	6:15	7.1	7:14	7.9
3	Tue.	7:29	6.7	8:07	8.3
4	Wed.	8:44	6.4	9:01	8.6
5	Thu.	9:57	6.3	9:53	8.8
6	Fri.	11:03	6.5	10:44	9.0
7	Sat.	12:08	6.7	11:37	9.1
8	Sun.	.....	.....	1:01	6.9
9	Mon. ●	0:25	9.1	1:50	7.1
10	Tue.	1:14	8.9	2:36	7.3
11	Wed.	1:59	8.6	3:19	7.4
12	Thu.	2:44	8.2	3:58	7.4
13	Fri.	3:30	7.7	4:41	7.4
14	Sat.	4:17	7.2	5:23	7.4
15	Sun.	5:06	6.6	6:05	7.4
16	Mon.	5:59	6.1	6:46	7.4
17	Tue. ☽	7:00	5.7	7:32	7.4
18	Wed.	8:06	5.4	8:20	7.5
19	Thu.	9:17	5.3	9:06	7.6
20	Fri.	10:22	5.4	9:53	7.7
21	Sat.	11:19	5.7	10:39	8.0
22	Sun.	.....	.....	12:15	5.9
22	"	.....	.....	11:24	8.2
23	Mon.	.....	.....	12:58	6.2
24	Tue.	0:10	8.4	1:42	6.5
25	Wed. ○	0:55	8.6	2:23	6.8
26	Thu.	1:40	8.7	3:03	7.1
27	Fri.	2:25	8.6	3:40	7.3
28	Sat.	3:15	8.3	4:21	7.6
29	Sun.	4:07	7.9	5:03	7.8
30	Mon.	5:04	7.3	5:49	8.0
31	Tue. ☾	6:00	6.7	6:38	8.0

JOHNSON
Sea-horse OUTBOARD MOTORS

THE BEEBE COMPANY

Tide Tables for Astoria District
JULY

LOW—		A. M.		P. M.	
Date		h. m.	ft.	h. m.	ft.
1	Sun.	11:53	0.0	.....	.....
2	Mon. ☾	0:35	2.1	12:45	0.6
3	Tue.	1:45	1.6	1:42	1.1
4	Wed.	2:51	1.0	2:41	1.6
5	Thu.	3:55	0.3	3:41	2.0
6	Fri.	4:53	–0.4	4:40	2.3
7	Sat.	5:48	–1.0	5:35	2.5
8	Sun.	6:38	–1.3	6:30	2.5
9	Mon. ●	7:26	–1.5	7:23	2.6
10	Tue.	8:11	–1.4	8:13	2.5
11	Wed.	8:55	–1.3	9:04	2.5
12	Thu.	9:35	–0.9	9:52	2.4
13	Fri.	10:15	–0.5	10:43	2.4
14	Sat.	10:56	0.1	11:36	2.3
15	Sun.	11:36	0.7	.....	.....
16	Mon.	0:28	2.2	12:20	1.3
17	Tue. ☽	1:26	2.0	1:07	1.8
18	Wed.	2:23	1.7	1:58	2.3
19	Thu.	3:21	1.2	2:53	2.7
20	Fri.	4:15	0.7	3:47	3.0
21	Sat.	5:05	0.2	4:39	3.1
22	Sun.	5:51	–0.3	5:30	3.1
23	Mon.	6:35	–0.8	6:20	3.0
24	Tue.	7:16	–1.1	7:04	2.8
25	Wed. ○	7:56	–1.3	7:50	2.5
26	Thu.	8:37	–1.3	8:40	2.2
27	Fri.	9:16	–1.2	9:27	1.8
28	Sat.	9:58	–0.9	10:17	1.5
29	Sun.	10:40	–0.4	11:12	1.2
30	Mon.	11:26	0.2	.....	.....
31	Tue. ☾	0:16	0.9	12:17	0.9

COMPLETE STOCK
of PIPE FITTINGS

(Testimony of Thomas Rustad.)

Mr. Bowerman: Q. How long were you at the Melody before you drifted away?

A. Approximately an hour, sir. That is——

Q. Didn't you testify——

Mr. Wood: Wait. He hadn't finished his answer.

Mr. Bowerman: Q. (Continuing) ——on direct examination it was 30 to 45 minutes? Didn't you? Finish your answer.

A. That is the time we tried to stay by her, sir.

Mr. Bowerman: Answer my other question. Didn't you testify on direct examination you were at the Melody 30 to 45 minutes before you drifted away?

A. 30 to 45 minutes, did you say?

Q. Yes, sir.

A. I would say from forty-five to an hour.

Q. You haven't answered my question. I asked you, did you testify on your direct examination that you were at the Melody from 30 to 45 minutes before you drifted away? A. Yes.

Q. Now you change your mind and say you were 45 minutes to an hour? Is that your recollection?

A. I just got through stating it was forty-five to an hour. I didn't say——

Q. Oh. You didn't say thirty to forty-five? How is that? [199]

Mr. Wood: I submit to the Court the record will show that.

Mr. Bowerman: Q. Did you have any line on this raft? Did you have any line of any kind on your rubber raft?

(Testimony of Thomas Rustad.)

A. There is only a small line that circles a raft for holding onto it.

Q. That was all? A. Yes, sir.

The Court: How many oars? One pair?

A. Yes, sir.

The Court: How big a raft?

A. It is a 5-person raft, sir.

The Court: The same as used by the Navy?

A. Yes, sir. I think it is an airplane raft.

The Court: Airplane.

Mr. Bowerman: Q. Now you were there when Mister—when the man who made—the man from Mr. Wuori's crew was taken off the Melody? You were there, weren't you? A. Yes, sir.

Q. And did you ask the Coast Guard man to put a line on that boat? A. Yes, sir.

Q. Did he do it? A. No, sir.

Q. Did he give any reason why he would not do it?

A. He said as long as the Stampede had a line on there he [200] was unable to do anything.

Q. Could not do anything. What sort of a boat was that?

A. Oh, I would say it was in the neighborhood of 55 feet long, sir.

Q. A powerboat? A. Yes, sir.

Q. Built for towing?

A. Not especially, sir, but——

Q. Was it one of these self-propelling lifeboats or what was it?

(Testimony of Thomas Rustad.)

A. No, sir. It was—well, it was built for speed, more or less.

Q. Now when you left there where did you go to?

A. Point Adams.

Q. And were you there when the Melody came in at night? A. No, sir.

Q. Where did you stay that night?

A. At the hotel.

Q. You were not—did you go back and try to get on your boat when it had been towed in?

A. No, sir.

Q. Did you make any effort to be of any assistance in saving your boat?

A. We were in contact with the Coast Guard at all times.

Q. You haven't answered my question. I asked you whether you made any effort in saving the boat, physical effort. [201]

Mr. Wood: At what time?

Mr. Bowerman: Any time.

A. There was nothing that I could——

Q. I asked you if you made any effort. If you have anything further to say I presume the Court will permit. I would like to have you answer my question first. Tell us whether you made any effort to save that boat at any time.

A. I made an—that is, asked the crash boat to put a line aboard, which I have explained.

Q. And you gave the answer you have told about. Now did you do anything else?

A. I made arrangements for them, that is, I

(Testimony of Thomas Rustad.)

asked them if they would stand by as much as possible, which they said they would.

Q. And how long did they stay there?

A. The crash boat was on the scene about 45 minutes approximately.

Q. Then where did you go?

A. Point Adams.

Q. All of you, you and the crash boat crew. How many were in the crash boat crew?

A. I don't know, sir.

Q. Well, was it a large number of men or just a few?

A. I would say there was probably eight or ten.

Q. Probably eight or ten, and five of you?

A. Yes, sir. [202]

Q. And you went to Point Adams, and you put up in the hotel? A. At Astoria, yes.

Q. Oh, you went on to Astoria? A. Yes.

Q. You didn't stay at Point Adams?

A. No.

Q. How long were you at Point Adams when you came in there?

A. About an hour and a half, sir.

Q. Then you went to Astoria? A. Yes, sir.

Q. And put up at the hotel. What time did you get to Astoria?

A. In the neighborhood of between seven and eight o'clock.

Q. Now when did you next see the Melody?

A. The next morning.

Q. What time?

(Testimony of Thomas Rustad.)

A. It was about eight o'clock.

Q. Were you there when Mr. Wuori and his crew assisted the Coast Guard people in pumping it out?

A. I don't know whether they did or not.

Q. Well, were you there?

A. We came there at eight o'clock, sir.

Q. Well, was it pumped out when you got there?

A. Yes, sir. They had just finished.

Q. You had no part in pumping it out?

A. Not physically, sir. [203]

Q. Well, did you spiritually or mentally have some part in it?

A. I requested the Coast Guard and they said they would.

Q. Oh, you requested it and they said they would? A. Yes, sir.

Q. And Captain Wuori came down and did it? That is the way it was?

A. I don't know that he did.

Q. Who did you make the request of?

A. The man in charge, sir.

Q. Who was that?

A. I don't recall his name right now, sir.

Q. You have given us a bill here, or a contract for the construction of this boat that calls for $10,700.00, a 46-foot trolling boat. Was that a complete boat? A. A complete hull, yes.

A. A complete hull. Does that include the upper works?

A. Everything, sir, in the line of woodwork.

(Testimony of Thomas Rustad.)

Q. Huh?

A. Everything in the line of woodwork, rudder, everything except the engine.

Q. What about the steering works outside the rudder? A. That is installed by them.

Q. Huh? A. That is included. [204]

Q. That is included in this price. That is part of the hull, is it? A. Yes, sir.

Q. Where is the rest of this contract, the specifications? A. I don't understand you, sir.

Q. Well, this document says, "This to constitute an agreement between the Chambers Boat Company, Contractor, and Thomas B. Rustad, Purchaser, for the construction of a forty-six foot trolling boat according to the specifications as drawn up by Edwin Monk, Architect." Now that would tell what they were to do, wouldn't it? Where are those specifications?

A. I think Chambers Boat Company would have them.

Q. Well, wouldn't you have a set of them?

A. Not with me, no, sir.

Q. Well, you did have a set? A. Yes, sir.

Q. You do have the set somewhere, don't you?

A. I believe so. I don't know whether they are complete.

Q. Why didn't you have them with you here today? A. I saw no reason to.

Q. But you did think it a good idea to bring this Exhibit 3? A. And why not?

(Testimony of Thomas Rustad.)

Q. Well, why didn't you bring the rest of the deal?

A. That is all of it. That is the contract.

A. That is the contract. Well, this says it is to be done [205] according to the specifications?

A. Yes, sir.

Q. Why didn't you bring that along? Now, Mr. Rustad, I notice this is dated January 1st, 1945?

A. Yes, sir.

Q. Those boats are contracted some little time before you want to use them, aren't they?

A. Usually.

Q. How long did it take them to build this boat?

A. Three months.

Q. Three months. Now if you had lost this boat on the 25th of July, that was right at the beginning of the season, wasn't it, the fishing season?

A. Beginning of the tuna fishing season, yes.

Q. Yes. And if you had had to build another one in three months the season would have been over before you got it built?

A. Yes. That is, usually.

Q. Did you have any insurance to protect you against loss of the use of the boat for the season or just for the value of the boat as you figured it?

A. The value of the boat.

Q. You didn't have anything that was like use and occupancy on a building, or anything of that kind, if you know what it is?

A. (No response.)

Mr. Bowerman: I think that is all. [206]

(Testimony of Thomas Rustad.)

Mr. Wood: We will have some further questions. Do you want to go ahead on it now?

The Court: I guess you had better do it this afternoon.

Mr. Wood: I think we had better.

The Court: All right. Two o'clock.

(Witness excused.)

(Thereupon, at 11:59 o'clock a.m., a recess was declared until 2:00 o'clock p.m.)

Tuesday, October 30, 1945, at 2:13 o'clock p.m., court resumed herein as follows:

Mr. Wood: Mr. Rustad was on the stand, your Honor.

The Court: I think somebody should be called a captain in this case before we close it.

Mr. Wood: I hope we can. I don't know. Mr. Bowerman, you had closed, hadn't you?

Mr. Bowerman: I believe so.

THOMAS RUSTAD,

one of the Respondents, thereupon resumed the stand as a witness in behalf of the Respondents and further testified as follows:

Redirect Examination

By Mr. Wood:

Q. Mr. Rustad, in Mr. Bowerman's cross examination of you I [207] thought he was seeking to

(Testimony of Thomas Rustad.)

give the impression that because you were insured that you didn't take any particular interest in her safety and would go away and leave it. Now what about that? What was your state of mind about that boat out there in the ocean?

A. Well, the fact that it was insured, that didn't make any difference to us. We were very keenly interested in it at that time and continued to be so.

Q. And you stood by her for about an hour before the current separated you? A. Yes, sir.

Q. There was another point that I thought he attempted to make, which was that you thought the boat was going to sink. I don't know just what particular time he was referring to, but I think at one stage of his examination he said, "Didn't you think the boat was going to sink?" And you said "Yes." Now I want you to tell exactly about that. When you left the boat what opinion did you have about her? When I say left, I mean when you first jumped overboard and got into your life raft, what was your opinion about it?

A. Well, it happened so sudden that the only one thought in my mind was to get clear and get safe, and the two boys that were able to secure the life raft from the boat and come and pick me up——

The Court: You were lucky to get that far, weren't you? [208]

A. Yes. It so happened it was on the portside.

Mr. Wood: Q. I will put it this way: After you got into the life raft—that was a few minutes afterward, I suppose—and you had a chance to get

(Testimony of Thomas Rustad.)

around there and size things up, what was your opinion about the Melody's floatability?

A. At the time it happened we had no idea what would happen to it. It was an unknown quantity, but in order to be on the safe side, and for the crew's safety we had to take a life raft and see whether it would float or whether it would not, and if it floated—well, since it had we had no doubt in our mind but what it would float; that is, would continue to float.

The Court: Mr. Wood, don't they fish out further than six miles?

Mr. Wood: Ask him. I don't think he had reached the fishing grounds yet.

The Court: He had fish aboard.

Mr. Wood: The previous day.

The Court: How did he happen to be inshore?

Mr. Wood: I don't know. How about that, Tom?

A. We had left Astoria on the 22nd of July, and in common tuna fishing we take bait, which is around the North Head or the jetty of the Columbia.

Q. That is, you capture bait in the whole center in the ocean? A. Yes. [209]

Q. That is what you call taking bait?

A. Yes, sir. And we carry it in what we call the live bait racks. And we fished all during the 22nd and also the 23rd, and in taking the bait we didn't know what poundage we had or anything. We estimated we had between four and five tons.

Q. No. The Court wants to know why, if you

(Testimony of Thomas Rustad.)

were fishing, you were only six miles from North Head. Is that common fishing ground?

A. No.

Q. Then why did you fish there? Go ahead.

A. That is what I am coming at.

The Court: You ran out of bait?

A. In catching this five or ten tons we ran out of bait.

The Court: My Clerk wants to know—during the noon hour he asked me to find out—how you are going to get two men on a pole or one. He said when you caught a hundred-pound fish it takes two and when you got a smaller one it takes one. How do you know when to put two men on a pole and when to put one?

A. In fishing for albacore you seldom get fish that weigh over thirty-five pounds, or less. The average I would say is eighteen pounds.

The Court: You were going back out to fish that afternoon?

A. Yes, sir.

The Court: When you turned over were you seining for bait [210] then?

A. No, sir. We had taken our bait and were rounding Peacock Spit and were going back out to fish.

Mr. Wood: I think it is an interesting point, if the Court is interested in it. I don't think it bears on the case.

Q. Tell the Court how you throw that live bait

(Testimony of Thomas Rustad.)

out overboard and tuna gather around. Explain that to the Judge.

A. Well, in crossing out in the tuna banks or in the general ocean where the tuna are, it is generally good policy to look out for the gulls, and being it is a fact tuna feed on small fish and feed on the gulls gathered around also, and when sighted you go up and slack and circle around, and when making the circle you throw out the live bait and it attracts the fish to the bait. Being the live bait is larger, they seem to think that is a choice article for them, so they naturally gather around the bait, and in doing so they become so excited they will grab anything that hits the water. That is how they do.

Q. And how far off of the boat do you hook them?

A. The fish—oh, I would say we use a nine or ten-foot pole. It depends on the man that is using it, and that is the distance from the boat that you usually catch them.

Q. You just throw them over your shoulder into the boat? A. Yes.

Q. Now we will come back to the case. When you landed in [211] Astoria by the crash boat, what instructions did you leave with the Coast Guard before you went to the hotel?

A. I talked with Mr. Grubb, I believe his name was——

Mr. Bowerman: What was the name?

A. ——and asked him to——

Mr. Bowerman: What was the man's name?

(Testimony of Thomas Rustad.)

A. Mr. Grubb is his name.

Mr. Bowerman: What is that?

The Court: Grout.

Mr. Wood: Mr. Grout — G-r-o-u-t — Assistant Commander.

The Witness: ——and asked him if he would keep in contact with me at all times, if there was anything we could do, or how the progress of the towing of the Melody was coming, and then it was brought in if he would help, that is, pump it out and see that it was taken care of, because at the time the crew and myself were pretty well played out and wanted to get up where we could take a bath and clean up and have a little rest, and he agreed to do so.

Q. Did you ask him to be notified when the boat came in to the beach? A. Yes.

Q. Were you notified? A. Yes.

Q. By the Coast Guard?

A. By Mr. Grubb personally. [212]

Q. About what time?

A. I would say it was one o'clock approximately. I am not certain.

Q. In the morning? A. Yes, sir.

Q. Then at eight o'clock—well, when you were notified at one o'clock, did you give him any message or instruction then?

A. Yes, sir. I asked him if he—he said the boat had been brought in safely and was beached and they were waiting for the tide to drop, at which

(Testimony of Thomas Rustad.)

time he said he would put the pumps aboard and pump her out and see that everything was O.K.

Q. And at eight o'clock in the morning you went to the scene? A. Yes, sir.

Q. And did you find that the pumping had been done?

A. They had just finished pumping the boat.

Q. When you say "They," who do you mean?

A. The Coast Guard. Saying that I mean that I had not made any arrangements with anybody else.

Q. At that time I suppose the boat was dry on account of low tide? A. Yes, sir.

Q. And she laid there until she floated off?

A. Yes, sir. There wasn't anything anybody could do until she floated.

Q. And when she floated what did you do toward taking charge [213] of her and sending her to where she was going?

A. At that time I made arrangements with Mr. Grubb to have the boat towed to the Columbia River Salmon Company. There was no way we could do it, as we had no facilities ourselves, and he said he was very glad to do it for us.

Q. What that done?

A. Yes, sir. Well, eventually.

Q. There was some interruption, was there?

A. Yes, sir. It was sidetracked at Columbia River Packers instead of Columbia River Salmon Company.

Q. By whom?

A. So far as I know it was Mr. Wuori.

(Testimony of Thomas Rustad.)

Q. But you interfered and corrected that and had it sent to the Columbia River Salmon Company, did you? A. Yes, sir.

Mr. Bowerman: That is objected to as very leading.

Mr. Wood: Yes, it was.

Q. When the Melody was lying there on the beach at Point Adams that next morning did Mr. Wuori say anything to you about insurance on her?

A. Yes, sir. We came down at eight o'clock and Mr. Wuori called me aside and said he wanted to talk to me, which I said all right, and we went back on the stern and he asked me how much insurance I had and whether it was full coverage, and that was all he asked. [214]

Q. Did you answer him?

A. I told him I had full coverage and he——

The Court: The Coast Guard didn't make any charge for anything they did, did they?

Mr. Wood: No; they never do. They are not allowed to. I think that is all.

The Court: You say they are allowed to?

Mr. Wood: I don't believe they are permitted to make a charge. Excuse me. Mr. Tatum wants me to develop one further point.

Q. At the time your boat turned over were there any lines out which would make an entangled hazard to anything approaching it? A. No, sir.

Mr. Wood: That is all.

(Testimony of Thomas Rustad.)

Recross Examination

By Mr. Bowerman:

Q. Where were your lines at that time?

A. Pardon?

Q. Where were your lines at the time your boat capsized?

A. Lines? I imagine you are referring to——

Q. Just the same kind that counsel talked about.

A. Well, that will cover all the lines, as a matter of fact. Our tie-up lines were secured, as they always are when we are going to sea, and trolling lines, as we had reached our fishing [215] ground, were secure in the stern.

Q. What do you mean by that?

A. Tied up.

Q. With what?

A. Well, it is kind of a hook that we fasten our lines on, tie them fast so that the waves or anything that comes over won't wash them.

Q. Did you lose your lines between the time your boat capsized and you got it back?

A. No, sir.

Q. They were all there? A. Yes.

Q. All tied to this hook?

A. Our trolling lines were tied to the hook, yes.

Q. You didn't lose any lines?

A. Not that I can recall.

Q. Huh? A. Not that I can recall, sir.

Q. Well, if you had lost some you would have remembered it? A. Yes, sir.

(Testimony of Thomas Rustad.)

Q. So you are prepared to say you didn't lose any lines on it? A. Yes.

Q. And you do say so? A. Yes, sir.

Q. All right. Now you say that Mr. Grubb told you that he [216] pumped your boat out for you?

A. I just took that for granted, sir. I asked him to do it and he said he would.

Q. Well, I see. He told you he would do it?

A. Yes, sir.

Q. Then he told you he would haul it over and deliver it to the Columbia River Salmon Company?

A. Yes, sir.

Q. And do they do that service regularly down there gratis for people that ask them to, that you know of?

A. I don't know whether they have charged anybody else before. He never charged me. He said he would be very glad to do it.

Q. When you got there the next morning the boat was pumped out? A. Yes.

Q. And these gentlemen that had saved the boat and brought it in were there, too, were they?

Mr. Wood: I object to the question. I object to the form of the question. The gentlemen didn't save the boat. The Coast Guard saved the boat.

The Court: You go further than that and say they are not gentlemen, don't you?

Mr. Wood: Yes, sir.

Mr. Bowerman: I didn't understand the Court's remark.

The Court: I didn't rule. [217]

(Testimony of Thomas Rustad.)

Mr. Bowerman: What?

The Court: I didn't rule. I am not going to.

Mr. Bowerman: Did he answer the question?

The Court: He asked you about Wuori and his crew, whether they were there, whether he knew what you had done. A. Yes, they were there.

Mr. Bowerman: Q. Where were they from your boat?

A. I believe they were there standing around it, or some were on it.

Q. How is that?

A. Some were there standing around it and some were on it. I don't know their exact positions. I wasn't up there to ascertain it.

Q. Was the clearing of the water out of the boat—had that been completed before you got there?

A. They had just finished.

Q. They had just finished it. When you say they had just finished it, who do you mean?

A. The Coast Guard.

Q. All right. Now just indicate who it was and what the various members of the Coast Guard were doing?

A. I don't know their names. All I can say is that the Coast Guard boys were standing by the pump and were rolling up the hose.

Q. And what was Captain Wuori doing? [218]

A. I don't know.

Mr. Wood: He was asking about insurance.

Mr. Bowerman: What?

Mr. Wood: He was asking about insurance.

(Testimony of Thomas Rustad.)

Mr. Bowerman: If you are going to testify, get on the stand. Otherwise I would like to ask this witness.

The Witness: I don't know what he was doing at the time I arrived.

Q. Where was he?

A. That I don't know. He was evidently there, because he asked to talk to me a few moments after I was aboard the boat.

Q. Were any of the members of his organization on the boat when you got there?

A. Yes, sir. There was one I remember specifically.

Q. Was he one of the gentlemen sitting in the back part of the room? A. Yes, sir.

Q. Will you point him out to me?

A. Mr. Syvanen I believe is his name.

Q. Syvanen. What was he doing?

A. Standing there.

Q. Was he on the deck? A. I believe so.

A. Well, was there anyone below deck?

A. Not that I know of. [219]

Q. You haven't any knowledge yourself as to who actually pumped the boat out, have you?

A. Not being there I can only go by what the Coast Guard told me.

Q. What?

A. Not being there I can only go by what the Coast Guard told me.

Q. Your statement, sir, that the Coast Guard pumped the boat out is pure assumption.

(Testimony of Thomas Rustad.)

A. Well, I don't think the Coast Guard would lie.

Q. Well, that is a matter of opinion. But you didn't see the Coast Guard do anything incidental to pumping the boat out, did you?

A. Other than handle a pump, that is, rolling up a hose and taking the pump away.

Q. That was their pump, wasn't it, a Government pump that appeared there? A. Yes, sir.

Q. It is quite natural they would take it back, isn't it?

A. Yes, sir, unless it was borrowed.

Q. Well, if it was borrowed they would still want it back, wouldn't they? I am trying to find out what you base your statement on, which you have repeated a number of times, that the Coast Guard pumped the boat out. It is a pure assumption of what someone else told you; is that right? [220]

Mr. Wood: No. I object to that.

Mr. Bowerman: Just a minute, your Honor.

Mr. Wood: I object to the statement—it is pure assumption—for this reason: The man has already testified he asked Grubb to have it pumped out and it is presumed Grubb would do it, but when he got there he found him standing by the pump and rolling up the hose, and it is not assumption.

The Court: He said more than that. He said a Coast Guard told him he pumped it.

Mr. Wood: Well, you can leave that out.

The Court: I am not going to leave it out because it is in the case.

(Testimony of Thomas Rustad.)

Mr. Wood: O. K.

Mr. Bowerman: Q. Who told you that the Coast Guard pumped it out? A. Mr. Grubb.

Q. Mr. Grubb. Is he here today?

A. No, sir.

Q. Huh?

A. No, sir. I will also add that Mr. Jensen also informed me.

Q. Who? A. Mr. Jensen.

Q. One of these gentlemen here in the courtroom? A. Yes, sir.

Q. And he told you what? [221]

A. He also said that they had——

Q. Who?

A. ——finished pumping the boat out.

Q. Mister—— A. Mr. Jensen.

Q. Jensen told you that the Coast Guard had pumped the boat out? A. Yes, sir.

Q. He told you that there, did he?

A. The next morning.

Q. That would be the 25th, wouldn't it?

A. Yes, sir.

Q. Who else could have heard that besides you and Jensen? A. I don't know, sir.

Q. Well, was anybody around? Was it a general conversation?

A. I didn't think it important at the time to notice.

Q. No. Now what did Mr. Jensen say to you? Did you ask him who pumped the boat out?

A. No, I didn't.

(Testimony of Thomas Rustad.)

Q. What did you say to him and what did he say to you?

A. I believe when I came out I naturally said, "Good morning," and asked how everything was going and he said they had just finished pumping the boat out—the Coast Guard.

Q. He said they had finished pumping the boat out? A. He said the Coast Guard had.

Q. He didn't say he had any part in it; he said the Coast [222] Guard. Is that what he said?

A. Well, he was part of the Coast Guard.

Q. Oh, Jensen was part of the Coast Guard. I thought you said somebody connected with Wuori said that.

A. You must be mistaken.

Q. I see. Just the Coast Guard?

A. Yes, sir.

Q. Grubb told you that and Wuori told you that? A. Yes, sir.

Q. Who else? A. Nobody I know of.

Q. Who have you seen there that has been a witness against you of the Wuori people? Any of them there?

A. I remember Mr. Syvanen for one; Mr. Wuori.

Q. What was Mr. Syvanen doing?

A. He was standing on deck.

Q. He was standing on the deck, doing nothing?

A. Well, as far as I could see, yes.

Q. Who else was there? A. Mr. Wuori.

Q. Mr. Wuori was there. Where was he?

(Testimony of Thomas Rustad.)

A. I don't know.

Q. You didn't see him?

A. I don't remember in what position he was. He might have been standing on the sand; he might have been on deck or anyplace. [223]

Q. All right. Who else was there?

A. I don't know. I had never seen the other fellows before and I could not tell.

Q. Are they here today? Have they been witnesses in the case?

A. They evidently were on the boat. They are here now.

Q. How many men were on the boat, according to your best recollection? A. I don't know.

Q. Well were there five or fifteen?

A. There were four, from all I could gather.

Q. There were four men on the deck?

A. On the Stampede at the time of the accident. I don't know how many were on the deck when we arrived.

Q. I am talking about down there when they said they pumped the boat out. You understand that, don't you?

A. I have no idea how many there were.

Q. Well, was it a large crowd or just a few?

A. A few.

Q. Were there four? Was Mr. Wuori's people there?

A. That I would not say. I didn't see them. I didn't see them together at one time and I don't know.

(Testimony of Thomas Rustad.)

Mr. Bowerman: That is all.

Mr. Wood: That is all.

(Witness excused). [224]

The Clerk: Will you state your name, please.

Mr. Jensen: Arloy F. Jensen.

ARLOY F. JENSEN

was thereupon produced as a witness in behalf of the Respondents and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Tatum:

Q. Your name is Arloy F. Jensen, is that correct? A. Yes, sir.

Q. You are chief boatswain's mate of the Coast Guard? A. Yes, sir.

Q. How long have you been with the Coast Guard? A. Since July 30, 1935.

Q. Since 1935. Are you now stationed at the Point Adams station, Hammond, Oregon?

A. Yes, sir.

Q. How long have you been stationed there?

A. I have been stationed there ten years and three months.

Q. Ever since you have been in the Coast Guard?

A. That is right.

Q. Were you on duty on July 24th, 1945, the day that the Melody overturned at sea?

(Testimony of Arloy F. Jensen.)

A. That is right, sir.

Q. Did you receive a call from anyone to come to the aid of the Melody, or did the Coast Guard receive a call? [225]

A. Yes, we received a call from KDZZ, from the fishboat Stampede.

Q. KDZZ. And what was the gist of that message, Mr. Jensen?

A. Well, we received the call and they stated that they were standing by the fishboat Melody and she was submerged and part of the pilothouse and the afterboat was showing. That was all.

Q. Did they ask you to come out and help them, or ask the Coast Guard to come out and help?

A. Well, I didn't receive the call myself, but naturally when we receive a call like that the first thing we do is to proceed immediately to assist in a case like that.

Q. Did you do that? A. Yes, sir.

Q. What kind of a boat did you go out in?

A. I went out in a 36-foot boat, lifeboat.

Q. Who was in command of that boat?

A. I was.

Q. What is the horsepower of that?

A. That is 75 horsepower gasoline.

Q. How long did it take you to get out to the scene where the Melody and the Stampede were?

A. Well, we left the station at about 3:20. I think that it was about five or ten minutes, or ten or fifteen minutes after five at the time that we arrived alongside of the fishboat Stampede. [226]

(Testimony of Arloy F. Jensen.)

Q. Mr. Jensen, I will ask you to step down for just a moment to this chart which has been marked Libelants' Exhibit 1, and ask you to indicate on that chart where the Melody and Stampede were approximately at the time you arrived at the scene?

A. Well, if you had a parallel rule here I might show you better. There is 279 degrees true from North Head, as I have it. That is as close as I could judge at the time.

Mr. Wood: He wants a parallel ruler.

The Witness: Well, this will do all right.

Mr. Fulton: I don't have any here.

The Witness: Well, it is 279 degrees from North Head, approximately seven miles off. If I had a parallel rule—this wouldn't do any good. This won't be accurate, inasmuch as you want to arrive at a parallel line.

Mr. Wood: If the witness wants to I can send and get a pair of rulers in about ten minutes. We can postpone this and do this later.

The Witness: You can if you want to, but I can show you an approximate area within a radius of one mile. The exact position, or dot, is something I could not tell from where I was at. You understand that.

Mr. Thomas Rustad: Do you want that? That is a straight edge.

The Witness: It is pretty hard to do it. (Witness measuring) It is a case you have to more or less guess at. When you haven't [227] got a parallel rule it is pretty hard to do. (Witness continues

(Testimony of Arloy F. Jensen.)

measuring) Seven miles would be—that is about as close as you can get it without a parallel ruler.

Mr. Tatum: Q. Will you make that a large No. 1 and circle it, Mr. Jensen, please. Just write over there. A. (Witness does as requested.)

Q. That point marked with a 1 and a circle around it is the point where you came upon the Stampede and the Melody as closely as you can tell. Let me check that distance again.

Mr. Wood: That is upon Libelants' Exhibit 2.

Mr. Tatum: Libelants' Exhibit 1.

Mr. Wood: 1? That is right, it is Exhibit 1. How much is a mile there?

A. How much is a mile? One of these distances right there is a mile.

Mr. Wood: Mark it there. I want to see how far you are off.

The Witness: One mile is here. It is equal to two here.

Mr. Wood: Is it about a quarter of an inch to a mile?

A. It is about three-eighths. No, no.

Mr. Wood: Well, that is close enough.

The Witness: Three-eighths is close enough.

(Witness returns to witness chair.)

Mr. Tatum: Q. Mr. Jensen, when you arrived at this point which you have just indicated what did you find? [228]

A. Oh, we found that the Stampede II had the derelict in tow.

(Testimony of Arloy F. Jensen.)

Q. What happened when you came up alongside?

A. Well, we saw that the Stampede had the Melody in tow.

Q. And did you have any conference or agreement—— A. Yes, we did.

Q. ——with members of the crew of the Stampede as to what you were going to do?

A. Yes. We talked to them.

Q. And what did you decide to do?

A. Well, we could see that he wasn't making very much progress, and on account of there was a northerly set, a set kind of offshore, and we asked if he wanted us to give him a hand. He said yes, he would like to have us tow very much.

Q. So what did you do?

A. So I went alongside of the—I went up to the Melody and put two men aboard.

Q. How did you put them aboard; by means of a raft, or did they just jump?

A. No. I put the base of the motor lifeboat close to the pilothouse. By grabbing the rigging and slipping on the top of the pilothouse they got aboard the fishboat Melody in that time.

Q. What did those men do?

A. Well, they were receiving instructions from me as to what to do. They climbed aft and they could not—I was going to [229] fasten the towing hawser from the motor lifeboat to the Melody. They were looking around back there. Of course, the boat being awash it was hard to walk around. They

(Testimony of Arloy F. Jensen.)

could not find any cleat back there they could make a towline fast to, so they asked me whether they could make a towline fast. I said, "How about getting underneath the fish hatch and getting hold of a rudder stock?" Well, it was pretty hard to do because the swell once in a while would come clear over the stern. So they finally chopped a hole through the top part of the deck in back of the fish hatch, so that a line could be passed through the hole and around the sternpost and up over the deck boom and made fast in that manner.

Mr. Wood: Did you say sternpost?

A. Rudder stock. That is what I meant to say.

Mr. Tatum: Q. Did your men do that?

A. Yes, sir, they did.

Q. With your towing hawser?

A. That is right.

Q. At that time did the Stampede have a line aboard the Melody?

A. Yes, they had—oh, while they were doing that, the Stampede's line that they had aboard broke; the towline that they had aboard the Melody broke.

Q. That was while your men were aboard?

A. That was while our men were aboard, yes.

Q. What did you do with the Stampede's broken line?

A. Well, the Stampede's broken line, they didn't do anything with that. The Stampede came back and another line was passed aboard from the Stampede to the Melody, which our men made fast.

(Testimony of Arloy F. Jensen.)

Q. Your men made the new line fast to the Melody? A. That is right.

Q. Then how did you take your men off?

A. Our men were taken off by one of the 36-foot motor lifeboats from Cape Disappointment. They had arrived about fifteen to twenty minutes after we did. They took the men off and put them back aboard our boat.

Q. Did the lifeboat from Cape Disappointment put a line aboard? A. No, sir.

Q. Was that the boat that stood by all the way in? A. That is the boat that stood by.

Q. When did the Triumph arrive on the scene?

A. Well, the Triumph, they arrived about, oh, thirty to forty-five minutes after we did.

Q. Were your men still on board the Melody at that time?

A. Our men were still on board the Melody at that time, yes.

Q. Did they make a line from the Triumph to the Melody?

A. Yes. They took a towline from the Triumph and that was also secured to the Melody.

Q. During all of this time you were up there close to the [231] Melody, did you see any fish-lines or nets, or anything floating around that were a hazard?

A. No, sir. I don't recall that there was. Otherwise we probably would not have went alongside.

Q. How was the sea at that time?

A. I would say it was light to moderate sea.

(Testimony of Arloy F. Jensen.)

Q. What about the wind?

A. The wind was,—oh, six to eight miles from the southwest, light.

Q. In performing this operation, or getting your line aboard, what, if anything, was dangerous about doing that?

A. Well, there was some danger to the two men that I had aboard. Even though they had life jackets on them there was a certain amount of oil, you know, fuel oil or lubricating oil, that naturally would float around, probably the decks and all being under water, would be slippery, see; and there was danger, too, in having to chop a hole through the deck under the water and at times they had to stick their heads under water to see whether they could make the towing faster in order to get it fastened under the rudder stock.

Q. Was there any danger to the lifeboat?

A. No, there was no danger to the lifeboat.

Q. Now that you had three lines on the Melody, one from your boat, one from the Stampede, one from the Triumph, did you then start out for the Columbia River? [232]

A. Yes, we then started out.

Q. Was the Stampede in the middle of this towing flotilla? A. Yes, that is right.

Q. Was your boat on the portside of the Stampede? A. That is right.

Q. And the Triumph was on the starboard side of the Stampede? A. On the starboard side.

Q. Then did anything happen from that time

(Testimony of Arloy F. Jensen.)

until you started to enter the channel of the Columbia River?

A. No, nothing happened, except that we didn't make very much time with it.

Q. It was too slow a job?

A. Yes, it naturally would be.

Q. At what time did you start coming into the mouth of the Columbia River?

A. Oh, I would say about—oh, probably about 9:45, 9:30 to—somewhere between 9:30 and 10:00 o'clock.

Q. About what time was it that the Stampede got into trouble with its wheel?

A. Oh, it was about 10:30 or 10:45.

Q. Where were you then?

A. Oh, we were—as near as I could tell we were approximately seven to eight hundred yards, one hundred twenty degrees true from No. 5 channel buoy.

Q. Will you step down and indicate on Libelants' Exhibit 2, the [233] chart of the entrance of the Columbia River, approximately where that was?

Mr. Fulton: What was that last, Mr. Reporter?

(Last question read.)

Mr Bowerman: What was the answer?

(The last answer was thereupon read.)

The Witness: That is No. 5-A. Again we should have parallel rules to do more exact work. I wish I had known and brought them along, and dividers, too, to get the distance.

(Testimony of Arloy F. Jensen.)

Mr. Fulton: You take this, too.

The Witness: I never navigated like this before in my life.

Mr. Tatum: Q. I only want an approximation, Mr. Jensen

The Witness: Will you hold this? That is it. Just let go of it now. Now seven or eight hundred yards. Eight hundred yards would be about three-quarters of an inch. Now what do you want?

Q. Make a circle there and put a 2 in the center of that circle.

A. (Witness does as requested.) That is approximately it.

Q. That point you have just indicated is the point where the Stampede fouled its line; is that correct? A. Yes, sir.

Q. Mr. Jensen, you were on the portside of the Stampede. Could you tell what happened at that time, or what happened to the [234] best of your knowledge?

A. Well, we were going along pretty good after we got in the river, bein gas it was flood tide, and all of a sudden I could see the Stampede start slowing down. Naturally we were moving ahead. I could see something was wrong and we shut it down and threw it out of gear and stopped the boat and I topped over to port so I would not foul with the Stampede and the Triumph and looked over to the Stampede. I thought maybe she was broken down or disabled, and I saw him taking in on the cable

(Testimony of Arloy F. Jensen.)

and I heard him hollering the cable was fouled on the bottom.

Q. You heard someone from the Stampede say that?

A. Yes. There was a little bit of excitement there, you know. And then the—I heard Shaw holler from the Triumph.

Q. Who was Mr. Shaw?

A. That is the——

Q. He was the Coast Guardsman in charge of the Triumph?

A. That is right. He was in charge of the Triumph.

Q. All right. Go on.

A. He said, "You are going to foul my towline." He hollered to the Stampede. I don't know whether the Stampede heard him or not.

Q. Did the Stampede change its course in any way that you could tell?

A. No, they didn't change their course, with the exception that [235] they were taking in the towing cable, trying to clear themselves.

Q. To clear themselves from what?

A. From the bottom. That is all I know.

Q. Did that cause them to move back and forth from their position in the middle of the flotilla?

A. Well, naturally if we were taking in on the cable the boat would naturally go backward.

Q. But would it move from side to side?

A. No, it would not move from side to side. No.

(Testimony of Arloy F. Jensen.)

Q. What happened after you heard Mr. Shaw call?

A. Well, then it was only a matter of maybe seconds, or minutes, and then Shaw says, "You have got my towing hawsers fouled up in your wheel."

Q. Then go ahead. What happened from then on?

A. And from then on the Stampede became disabled and the Stampede had to let go of the towing cable, and the hawser, I believe. I could not see, being it was dark. We picked up the hawser from the Triumph and it was cut, and the end of it passed back, the end still fastened to the Melody was passed back aboard the Triumph.

Q. How did the Melody let go of its line? Did they take it off out there?

A. I didn't see how they let go of the cable. All I know is that they dropped the cable, and from what I seen after the [236] boat got in the following day that they didn't have the cable on the drum, I just assumed that they let the whole cable go. And I think Mr. Wuori's thought in doing that, the cable being made fast to the Melody and we would tow the Melody in, that the cable would still be on the Melody by the time we beached the Melody, so he could pick it up the following day or the next morning.

Q. Was the cable on the Melody when it got in?

A. No, sir.

Q. You don't know what happened to the cable?

A. Yes, I know what happened to the cable. The

(Testimony of Arloy F. Jensen.)

line that they used from the cable that was made fast to the boat broke.

Q. Where did it break? Right next to the Melody?

A. Well, I should say there was a piece probably about fifteen or twenty feet of line left from the Melody.

Q. The remaining part of the towline, you don't know what happened to that? A. No, sir.

Q. It wasn't there when you came in?

A. No, sir.

Q. At the time all of this happened, Mr. Jensen, where were you in relation to the Peacock Spit? Were you just inside?

A. Well, in relation to Peacock Spit at the time, you mean?

Q. At the time of this fouling.

A. Well, we were just a little ways south of it, or southeast [237] of it there.

Q. At the time were you in more dangerous waters than you were when you first saw the Melody seven miles to sea?

A. Well, are you asking for my own opinion in regards to that?

Q. Yes, your own opinion; your knowledge from being down there on the river.

A. Well, yes, I would say she was, being as she was inside the river and she was closer to the Spit and the jetties.

Q. And if you hadn't been there there might have been some danger to the Melody—if the Coast

(Testimony of Arloy F. Jensen.)

Guard boats hadn't been there? That would have been a more dangerous spot than it was out at sea?

A. Well, yes; it would be, naturally. Sure.

Q. Then after the Triumph resecured its line, then what did you do?

A. Then we continued on towing the Melody up above our station boathouse and put her on the beach.

Q. About what time was that?

A. Oh, that was about 12:30 to 12:45 by the time we got it on the beach.

Q. From the time you picked up the Melody until the time you beached it were you at any time afraid the Melody might sink?

A. No; no, we were not.

Q. Why weren't you?

A. Well, being that she stayed afloat we knew there was no [238] reason why she should sink, unless we busted her up or something like that.

Q. Then when you beached the Melody did you leave any orders as to what should be done for the care of her during the night, or did they call you the next morning, or what, if anything, was done?

A. Well, after we got her on the beach, why, there was nothing more that we could do about it until the tide went out low enough so that we could pump her out or give all the assistance possible in preparing it for floating her the next day.

Q. So what did you do then? Go to bed after that? A. Yes.

(Testimony of Arloy F. Jensen.)

Q. What time did you get up the next morning?

A. Oh, about six o'clock, I guess.

Q. Did you go to work on the Melody then?

A. Yes, I went to work on it.

Q. Tell the Court what you did?

A. We have a two and a half inch Gorman Rupp pump, the make of the pump we used to pump the Melody out. It was taken out to the beach and the Melody was pumped dry with that.

Q. Who pumped the Melody dry?

A. It was done by the Coast Guard.

Q. Were you in charge of that operation?

A. Well, I can't say I was in charge of it, being Mr. Grubb was there. [239]

Q. Was Mr. Grubb present at the time is was pumped out? A. Yes, he was.

Q. And were you present at the time it was pumped out? A. Yes.

Q. And you were supervising the work the men were doing; is that right?

A. Well, there wasn't much to supervise to it. All there was, we just hooked up the two and a half inch hose to the pump and dropped the other end of it into the hull of the Melody and started the pump up and pumped her out.

Q. And the Coast Guardmen did that?

A. Yes.

Q. Did you see any of the Stampede crew at that time? A. Yes, I seen them.

Q. What did they do?

A. Well, they were helping around the best they

(Testimony of Arloy F. Jensen.)

could. There wasn't much they could do. There wasn't much anybody could do. The pump was doing the work and taking the water out.

Q. Who was handling one end of the pump that was in the Melody? A. He was handling it.

Q. Does it have to be moved from place to place, or does it have to be put in one place?

A. Not necessarily after it was dry. The suction end of it is dropped into the hold. It stays right there.

Q. Until it is all dry, and then it is taken out?

A. Yes, unless we move it. We did move it. We did try to pump some water out of the engine room.

Q. Who did, the Coast Guard?

A. Yes, sir. But there wasn't enough water in the engine room to bother with and it was kind of hard to get out, and it didn't do much good.

Q. What time did you finish pumping it out?

A. Oh, I don't know. About 7:30 or 8:00 o'clock.

Q. About 7:30 or 8:00 o'clock?

A. About 7:00 o'clock, I guess.

Q. Then when were you able to refloat the Melody, or were you there at the time it was refloated?

A. Yes, I was there at the time she was refloated. I was aboard the boat. We towed her off the beach.

Q. About what time was it 12:00 to 1:00 o'clock, or 2:00 o'clock?

A. Oh, I would say it was around shortly after noon.

(Testimony of Arloy F. Jensen.)

Q. Shortly after noon? A. Yes.

Q. And you were on the lifeboat that towed the Melody away?

A. Towed her, took her off the beach, yes.

Q. Were you on the boat that took her up to Astoria?

A. No, I wasn't on the boat that took it up to Astoria.

Q. Some other Coast Guard boat took her up to Astoria?

A. No. The same boat I was on took her up to Astoria, or [241] the same fellow on the boat took her up.

Mr. Tatum: I think that is all.

The Court: Why did it take you two hours to get there to the scene of the wreck?

A. Why did it take us two hour? Excuse me.

The Court: Yes.

A. Well, our powerboat only makes about seven or eight knots an hour—that is, miles an hour.

The Court: And where did you come from?

A. Point Adams.

The Court: That is fourteen or fifteen miles. Is that the point?

A. Yes; I think it was around fifteen.

The Court: Anyhow, you started out as soon as you got the call?

A. Yes, sir, that is right. Oh, possibly it may have been five or six or seven minutes from the time we got the call until we started out.

(Testimony of Arloy F. Jensen.)

Mr. Tatum: I have finished my direct examination.

Mr. Bowerman: O.K.

Cross Examination

By Mr. Bowerman:

Q. Mr. Jensen, I am not entirely clear about some of these distances. Will you give us your best judgment, with the distance from Point Adams Coast Guard station out to where [242] you found this boat when you out there, the Melody?

A. Well, I can lay it out on the chart for you, but I think it is around, oh, around fourteen or sixteen miles.

Q. Fourteen or sixteen miles. And your boat runs about—that would be about a 2-hour run for the vessel you had? A. Just about that.

Q. And this other Coast Guard vessel that was out there, what was the name of that, the Stampede?

Mr. Fulton: The Triumph.

Mr. Bowerman: The Triumph?

A. The Triumph.

Q. The Triumph, yes. A. Yes.

Q. What is its traveling capacity?

A. Oh, she will do about nine.

Q. Where did she come from?

A. She came up from Tillamook Rock. That is the Tillamook life station.

Q. That is down there on the coast?

A. That is eighteen miles south of the Columbia River.

(Testimony of Arloy F. Jensen.)

Q. How many miles? A. Eighteen.

Q. Eighteen miles. And you got notice of this accident out there to the Melody by some telephone, wireless telephone or something of that kind? [243]

A. Yes; radio telephone from the Stampede.

Q. That would be Mister——

A. Wuori's.

Q. Mr. Wuori's boat? A. Yes.

Q. And that is the way you got your information? A. Yes, sir.

Q. And do you know how the other Coast Guard got the word? A. The crash boat?

Q. No; the—— A. Triumph?

Q. The Triumph. How did they get the word, do you know?

A. They got the word from Point Adams station.

Q. You got the word first from Mr. Wuori; then you passed the word down to the Tillamook Station?

A. Yes. That was done by the men on watch at the station.

Q. Uh huh. Now there was another boat out there with your flotilla. What was that?

A. That was a 36-foot lifeboat from Cape Disappointment.

Q. Cape Disappointment. Where is that station? Is that inside the river or not?

A. Yes, it is inside the river. It is across on the Washington side.

Q. On that channel that goes into Ilwaco there?

A. That is right, sir. [244]

Q. Do you know how they got the word?

(Testimony of Arloy F. Jensen.)

A. Well, they have a radio telephone, also a receiver, and I imagine they got it by radio, and in addition it was probably phoned over from Point Adams.

Q. From your station? A. Yes.

Q. They had the same opportunity to get it by radio from Mr. Wuori that you had?

A. That is right.

Q. And I have forgotten just the sequence of your arrivals there. Were you the first one there?

A. Yes.

Q. Then the Triumph, then the one from Cape Disappointment?

A. No. It was first the lifeboat from Point Adams.

Q. That is your boat?

A. That is our boat.

Q. Yes.

A. Then there was the boat from Cape Disappointment.

Q. Yes. A. And then the Triumph.

Q. And you got out there—you left your station about 3:20 and arrived at 5:00; is that the way it was—5:10 or something like that?

A. 5:10 or 5:15, something like that.

Q. Now this Melody was being towed backwards, wasn't it? [245] A. Yes, sir.

Q. Your lines were all fastened to the back end of the boat? A. Yes, sir.

(Testimony of Arloy F. Jensen.)

Q. And when you got there the Stampede was hitched onto it and was towing as best it could?

A. That is right.

Q. And your line went down through some opening in the deck, I believe?

A. No, sir. I believe that line was fastened around the rudderstock.

Q. That is what I say; or was it underneath?

A. Yes. It went through the fish hatch. You see, there is the fish hatch in the back. We can get out. That is open back in there, and they can reach in and get hold of the rudderstock.

Q. Yes, that was fastened to the rudderstock. Then the other two lines were fastened—holes were made for them through the deck?

A. Yes. The hole was chopped through the top part of the deck.

Q. Was that fishing hatch, or whatever you call that place, was that pretty well filled with water when you got there?

A. Why, yes. It naturally would be. The stern was awash part of the time. Part of the time it was up out of the water, then a swell would come in and it would be under water. [246]

Q. To pass along there a person would be in considerable water in that hole, wouldn't they?

A. Yes, that is right.

Q. Your men—did they get down there to fasten the rudderstock?

A. Well, they were put on. I put them on it from the lifeboat aboard the Melody and they climbed

(Testimony of Arloy F. Jensen.)

that. I put them on the pilothouse and they climbed back aft and in the fish hatch.

Q. I though you said you cut a hole in the deck?

A. We cut a hole in the deck.

Q. Cut a hole in the deck?

A. Oh, yes. We cut a hole in the deck in order to pass a line through it to secure it. The line was passed through the hole around the rudderstock, and over the deck beam, because I didn't consider that the rudderstock was sufficient enough to hold her as she was being towed.

Q. And you wanted to make it more secure than just the rudderstock? A. That is right.

Q. So the other Coast Guard boat fastened on about the same way. There was a hole cut for their line, another hole, or how was it cut?

A. No. It was passed through the same hole.

Q. The same hole as yours? A. Yes. [247]

Q. Now there is some hazard in getting boats, even small vessels like this, in close proximity out in the ocean, isn't there?

A. Yes, there is considerable danger. You have to be careful of your own boat, that you don't damage it by hitting the other boat or submerged object, whatever you are approaching.

Q. While you were there and putting your lines on, the cable from the Stampede broke, as I understand?

A. The cables didn't break, no. The line they used in addition to their cable.

(Testimony of Arloy F. Jensen.)

Q. Oh, they had a line. What sort of a line was that? A. Oh, probably a Manila line.

Q. Whatever it was, it broke and had to be repaired and another one put on?

A. The line wasn't repaired, no. They just put another line on.

Q. They threw out the one they had and put another one on?

A. I don't know what they done with the line.

Q. No, but I say whatever happened, before you were there a long time their line had broken and they put another one in place of it so they could continue their part of the work?

A. Yes, sir, that is right.

Q. Yes. I wasn't trying to find out what became of the line. I just wanted to know they were in a position to go ahead with their towing. Do you recall, while your men were fastening [248] your line on the boat, that you asked Mr. Wuori to keep going full speed in order to keep the boat from sinking because of the assistance it would be to your men in getting their line on? In other words, as I understand Mr. Wuori, he slowed up while you were hooking on. The boat had a tendency to sink and you asked him to get up full speed so as to keep the boat dry in the protection of your men while hooking on, while they putting your line on the Melody?

A. Yes, we did. We done that only as an experiment, because I thought by doing that it would raise the stern up so that it would make it easier for our

(Testimony of Arloy F. Jensen.)

men to work so they could work in the dry, but I found that didn't prove very satisfactory because we asked them to slow down again, because instead of the Melody raising the seas were coming over in a greater force, consequently making it more hazardous for our men to work down there.

Q. They were down in the boat, in the water at that time? A. Yes.

Q. Trying to fasten your lines on; is that right?

A. They were in the back aft in the fish hatch, yes.

Q. Or underneath the deck, as I have understood these gentlemen?

A. It is not underneath the deck, no. It is in the deck.

Q. In the deck?

A. Yes. The fish hatch is cut in the deck. You see, there [249] is a hole in the deck. It is not underneath the deck.

Mr. Fulton It is a place where they stand, about like this table and the width of the table.

Mr. Bowerman: Q. Do you have the time of the day when the line became fouled in the propeller of the Stampede?

A. Yes. That was approximately around 10:45.

Q. About? A. About 10:45.

Q. 10:45? A. Uh huh; in the evening.

Q. Was Mr. Rustad, the gentleman sitting here, around during any of this work when you got there? Did you see him there during that day or that night?

A. Yes, I seen him. We met him. He was on

(Testimony of Arloy F. Jensen.)

the crash boat. While we were proceeding on out to the Stampede we met him. He was coming in on the crash boat.

Q. He had left or was coming into the river?

A. That is right.

Q. Do you recall about how far it was from this boat, and when it was you saw him?

A. From the boat?

Q. How far from the Melody?

A. Oh, I would say about two to three miles.

Q. Two or three miles? A. Yes. [250]

Q. And did you see any more of him that day or that night? A. No, sir, I didn't.

Q. But you found Mr. Wuori and his crew out there towing his boat in? A. That is right.

Q. When you arrived, and they were along there until they got in trouble? A. That is right.

Q. And after they got in trouble, that happened to be at night; is that the way it was?

A. Yes, sir.

Q. Now there was a propeller fouled out in that general area there somewhere at that time, wasn't there? A. Yes; quite a ways inside the river.

Q. What?

A. It was quite a ways inside the river, where Mr. Wuori got his propeller fouled.

Q. But it was there in the river at that time?

A. Yes, it was.

Q. How far was it up the river from where you got in trouble?

A. Oh, it was in about two and a half miles.

(Testimony of Arloy F. Jensen.)

Q. Two and a half miles?

A. Or two miles.

Q. It was on the way, however, to Point Adams?

A. Yes. We had to pass through the mine field to get up to [251] Point Adams.

Q. You had to pass through the mine field to get up to Point Adams? A. Yes, that is right.

Q. That was some harbor protection that the Government put in there during the war?

A. Yes, sir.

Q. Is it a fact that—which one of these fellows was it?

(Mr. Bowerman here conversed with Mr. Fulton in an undertone.)

Q. Do you know one of these men by the name of John Kurtti back here? Do you know him by name? A. No, sir.

Mr. Bowerman: Will you stand up, Mr. Kurtii?

Q. Did you see that gentleman there when they were pumping the boat out, pumping the Melody out? A. No, I can't recall seeing him there.

Q. You can't recall seeing him? A. No.

Q. I will ask you whether he wasn't down inside holding the hose to pump out some lower level water there it wasn't reaching?

A. Well, perhaps I can't recognize him because he is dressed up now, is probably the reason. A man looks quite different sometimes. [252]

Q. What was the condition of Mr. Wuori's men there that morning when this pumping job was going on? They were not dressed up then, were they?

(Testimony of Arloy F. Jensen.)

A. No, they were not. No.

Q. What was their condition? What was the condition of their clothes?

A. Well, they wore clothes like a fisherman would. He would not wear good clothes while he was fishing upon the boat.

Q. Did these men of Mr. Wuori take a part in that pumping operation, as well as your men?

A. Well, I can't just recall that they did, but naturally everybody there, everybody was helping. If anybody could possibly do something they would do it—those that were standing around there.

Q. Mr. Wuori was there in charge of the Melody when you got out there—had it in tow in the ocean?

A. Yes.

Q. With his boat?

A. He was in charge. He had the Melody in tow and he was the skipper of his own boat.

Q. Yes; and he had his own crew there?

A. That is right.

Q. And he asked you people to get out and help, and you did? I mean, he asked the Coast Guard for help and they did help?

A. He called me by radio and said that the Melody was submerged [253] and only part of the pilothouse and the stern showing, and I told him naturally in cases like that we would proceed to his assistance as fast as we possibly could.

Q. The purpose of his call was to get assistance from you folks?

A. That is understood, when they make the call.

(Testimony of Arloy F. Jensen.)

Mr. Bowerman: Yes. I think that is all.

Mr. Tatum: Just a bit more on this pumping out operation.

Redirect Examination

By Mr. Tatum:

Q. Mr. Jensen, as I recall, you testified on direct examination all that there was to do was to hook up the pump, put the hose there in the hull and start the pump going; is that right?

A. That is all that is necessary, as far as I know.

Q. Did your men take the pump out, install it and set it up? A. Yes, they sure did.

Q. And did your men put the hose into the hull?

A. Yes, I believe they did.

Q. Did your men operate the pump?

A. They sure did.

Q. Did your men take the pump out again and clean it up? A. They sure did.

Q. Was that all that was done in the cleaning out of the hull?

A. No, it wasn't. After the water was pumped out I believe they had some fish in her that was removed, taken out. [254]

Q. But you don't know for sure?

A. Now, let's see. Wait a minute. No. I am thinking about another boat now. Excuse me.

Mr. Tatum: That is all.

Recross Examination

By Mr. Bowerman:

Q. There was a lot of fish in this boat, wasn't there?

(Testimony of Arloy F. Jensen.)

A. Yes, there was. I wouldn't say lots of fish, but to me there was quite a few tuna fish.

Q. I think the record shows about three and a half or four ton.

A. Well, that is quite a few tons.

Mr. Bowerman: That is all.

Mr. Tatum: That is all.

(Witness excused.)

The Clerk: State your name, please.

Mr. Shaw: Donald William Shaw.

DONALD WILLIAM SHAW,

was thereupon produced as a witness in behalf of the Respondents and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Tatum:

Q. Your name is Donald Shaw?

A. That is right. [255]

Q. You are chief boatswain's mate of the United States Coast Guard, Mr. Shaw? A. Yes, sir.

Q. Your station is Point Adams Coast Guard station at Hammond, Oregon? A. Yes, sir.

Q. How long have you been in the Coast Guard?

A. Approximately seven years, sir.

Q. How long have you been stationed at Point Adams? A. Approximately seven years.

(Testimony of Donald William Shaw.)

Q. Since you have been in the Coast Guard?

A. Yes, sir.

Q. Were you stationed at that point on July 24th, when the Melody was capsized?

A. Sir, sir.

Q. Where were you at the time you first heard about the Melody being capsized?

A. We were on the way back from Tillamook Rock.

Q. Were you aboard the Triumph?

A. Yes, sir.

Q. Are you the officer who usually commands the Triumph? A. Yes, sir.

Q. On this particular day I believe you had a commissioned officer aboard; is that right?

A. Yes, sir, we did. [256]

Q. And technically he is in command, isn't that correct, even though it is your boat usually?

A. No, sir. I am in charge of the boat. He being the senior officer present would naturally outrank me. However, the operation of the boat is left up to me.

Q. Where were you when you first heard this call from the Melody?

A. We were approximately four or five miles south of the river.

Q. Did you hear the Stampede make the call, or did you hear the call relayed from your Coast Guard station?

A. No, sir, I didn't. At the time we were not maintaining a radio watch, due to having slight

(Testimony of Donald William Shaw.)

difficulties with our receiver, and so we didn't hear the radio calls.

Q. You got your word then from the Coast Guard station?

A. Yes, sir. We were directed by the station to proceed and use the lifeboats.

Q. What kind of a boat is the Triumph?

A. The Triumph is a 52-foot boat, approximately 36 net ton, 160 horsepower Diesel engine. She is built exclusively for lifesaving at a cost of $87,000.

Q. That is the boat you frequently use in operations of this kind? A. Yes, sir.

Q. About what time did you reach the Melody and the Stampede?

A. 17:50; that is 5:50 p.m. [257]

Mr. Bowerman: What was that time, please?

A. 5:50, I believe.

Mr. Tatum: Q. And at the time you got there about where were everybody?

A. In the approximate position indicated by Chief Jensen, 279 degrees true, approximately six or seven miles from North Head.

Q. How many other Coast Guard boats were there at the time you arrived?

A. At the time we arrived there were two motor lifeboats on the scene.

Q. And the Stampede?

A. And the Stampede.

Q. And the submerged Melody?

A. Yes, sir.

Q. And was that all? A. That was all.

(Testimony of Donald William Shaw.)

Q. Mr. Jensen said there were two Coast Guardsmen aboard the Melody at the time you arrived; is that right? A. Yes, sir.

Q. Did you throw them a line and make them secure to the Triumph?

A. When we arrived we noticed, when we were approximately a mile away, that the Stampede turned around and headed back to the Melody, and when we arrived as they were engaged in [258] putting the Stampede's line back aboard the Melody the 36-foot lifeboat had a line on the Melody and we stood by until we had that line secure so we made them pass a port line also.

Q. And so you did? A. Yes, sir.

Q. What did the other lifeboat do at that time?

A. Which other lifeboat?

Q. Two Coast Guard lifeboats were out there?

A. Yes.

Q. The one commanded by Mr. Jensen?

A. Yes.

Q. That was attached to the Melody?

A. Yes.

Q. What did the other boat do?

A. The other boat stood by to render such assistance as she might do.

Q. And did it stand by the whole way in?

A. Yes, sir, until we——

Q. Until you reached this later point. About what time did you start towing the Melody to the Columbia River?

(Testimony of Donald William Shaw.)

A. I looked in the ship's log, that I passed my towline aboard at 18:30.

Q. And what time did you get under way?

A. At that time within two or three minutes, as soon as the line was secured. [259]

Q. About 6:30?

A. Approximately 6:30, yes, sir.

Q. Then the testimony has been as you rounded into Peacock Spit something happened to that Stampede's wheel. Will you explain that. Explain what happened then.

A. Well, we were heading in along the north side. One of the reasons we were set a little on the north side was, there was a ship coming in the center of the channel from the life ship inbound and we stayed on the north side so that we would give her clearance, and when we were near No. 5-A buoy there was a man standing alongside of me at the wheel and we noticed that the Stampede stopped towing. She seemed to stop rather abruptly, and of course the events then took place pretty rapidly but we did receive a radio message from the Stampede that she was fouled on the bottom, or her towline was fouled, and I answered them on the radio at that time, and then we lost radio contact because of the fact that when something like that happens you don't have too much time to be talking about it over the radio, and there being a flood tide possibly the Melody drifted in a little bit and the Stampede started to take in her wire in an attempt to free herself so that we could proceed with the tow, and

(Testimony of Donald William Shaw.)

I remember at that time Mr. McCormack was aboard and I told him that I was going to sheer to the south, to give the Stampede all the clearance that I possibly could, but when he backed down—I don't [260] know whether he backed down with his engines or whether he just used the power of his windless to take in the hawser, and that took his boat back before we could sheer off. He went over our towline. We attempted to call him by radio and inform him of this, but naturally he was working on deck and working with his lines, and we did get in touch with him from the stern of the Triumph and told him he was over our towline. In a case like that there is nothing you can do but pay out the slack in your towline in the hopes it will sink deeply enough so he will ride over the towline and not foul, but as it turned out he fouled it in his screw.

Q. Did it break your line?

A. Whether it broke our line at that time I could not say. However, it was necessary to remedy the situation to cut the line.

Q. Had you changed your course in any way before he fouled his propeller in your line?

A. I had started to change my course. I put the wheel hard right, but the rudder hadn't had much time to take any effect.

Q. You started to change your course away from the Stampede?

A. That is right, to give clearance and get away so my line would not foul.

(Testimony of Donald William Shaw.)

Q. But your ship hadn't gotten away much? You had just given the order?

A. That is right. The thing happened so fast there wasn't [261] much time.

Q. Yes. You cut your towline; is that right?

A. We didn't cut our towline. Mr. Wuori brought the line up over his stern and got us free, and took up slack; then he cut the other end, got that free, and we passed along the other side and we bended the two ends together and proceeded along with the tow.

Q. Was Mr. Wuori on the deck of the Stampede at the time this boat went across?

A. Well, he was the captain of the Stampede and I assume he was on deck.

Q. You could not tell whether he was in the wheelhouse or on deck in back of the winch?

A. I could not tell the exact position, no, sir.

Q. Then did you again make your line fast to the Melody? A. Yes.

Q. What happened to the Stampede?

A. The stampede was left with her wheel fouled with a short piece of our hawser, and the other lifeboat which had been standing by took the Stampede in tow.

Q. At the time all this happened, and the location in which it happened, were you in more dangerous waters then than you were six or seven miles out at sea? Was the Melody in a more dangerous position when the wheel was fouled with the Stampede than it was six or seven miles out at sea? [262]

(Testimony of Donald William Shaw.)

A. Yes, sir, I would say it was.

Q. Then did you continue the tow?

A. We continued the tow, yes, sir.

Q. And beached it at the Coast Guard station at Point Adams? A. Yes, sir.

Q. Mr. Shaw, at the time, or after the Stampede had fouled its wheel, was it in the position of being able to continue the tow of the Melody?

A. With the fouled wheel?

Q. Yes.

A. If a vessal has the wheel fouled it is in no position to navigate himself, let alone another.

Q. In other words, did it have to be towed in, or was it able to go under its own power—the Stampede?

A. Well, the Stampede, left in the condition that it was, with the fouled wheel, it was necessary that it be towed.

Q. During this entire operation, Mr. Shaw, were there any particular hazards of the Stampede II in towing the Melody, bearing in mind there was a good slack of flood tide, under all the conditions then existing?

A. Well, I would say that no more than the ordinary hazards you would encounter in towing a derelict under similar conditions.

Mr. Wood: If there were any particular hazards? If there were any. [263]

Mr. Tatum: Q. What hazards were there, if any?

Mr. Wood: If any?

(Testimony of Donald William Shaw.)

A. Well, there was a hazard. He could possibly have damaged his gear. He did have a towline on it and he possibly could have damaged that. But no more particular hazards than you would ordinarily expect to encounter doing work of that nature.

Mr. Tatum: Q. When the Stampede fouled its line, did I understand you to say that you heard someone from the Stampede say that they fouled their line on the bottom?

A. Well, as I recollect, I think Mr. Wuori, if he operates his own radio, I believe that he talked to me, but I think there was some conversation going on between the crew members on deck, too, and when they stopped we deemed it was fouled on the bottom or fouled on something.

Q. What would cause the line to become fouled on the bottom?

A. What it might have possibly fouled on?

Q. What would cause the line to become entangled on the bottom?

A. The only thing that would cause the line to be fouled on the bottom would be the fact that the line was on the bottom, or, that is, near the bottom, which engaged some object.

Q. Would that be skillful maneuvering of the Stampede, to cause that, or would it be unskillful?

The Court: How would it act from towing?

A. Towing, sir?

The Court: How would it act on the bottom?

A. I believe Mr. Wuori was using wire to tow,

(Testimony of Donald William Shaw.)

and wire, having more water, and not being able to tell how much strain that Manila would take——

The Court: How much water was there?

A. I would say that in that particular spot probably—it would be from the north side, I would hazard, from fifty to sixty feet of water.

The Court: How much cable would be added?

A. In feet?

The Court: Yes. What is the testimony of fathoms?

Mr. Wood: Three hundred.

The Court: Three hundred fathoms?

Mr. Bowerman: How much cable did you have out?

Mr. Wood: One hundred fathoms.

Mr. Bowerman: He had a total of three hundred fathoms, he says, and one hundred of it was out.

The Court: How many feet in one hundred fathoms?

A. Six hundred feet, sir.

Mr. Tatum: Q. Mr. Shaw, would the school of towing have permitted that line to drag on the bottom?

A. That depends on the conditions that he is working against with his tow. I believe that the primary reason that the wire was slack was due to the fact that the wire was made fast to the Melody by a Manila component or strap, and not knowing just how much of a strain this Manila strap would take the Stampede II [265] was towing at reduced power, you might say.

(Testimony of Donald William Shaw.)

Q. You mean the Stampede II wasn't pulling as hard as the two Coast Guard boats?

A. That is hard to say. He was not pulling as hard as he was able to pull, due to the fact that he didn't know the strength of this Manila strap.

Q. Did your Manila line go under water, or was it taut from the Melody to your boat?

A. The towline is never taut. That is, it depends on the action of the sea, and the Manila line will go under the water a little bit, and when you run on a swell it will lift up and become taut, and then when you go back down the backslide or the swell it will slack off a little bit.

Q. Did the fouling take place while the Stampede was attempting to shorten its line, or did they attempt to shorten the line after they became fouled? A. After they became fouled.

Mr. Tatum: That is all.

Cross Examination

By Mr. Bowerman:

Q. Getting a line fouled there was one of the hazards of towing that boat in, wasn't it?

A. Possibly.

Q. Three of you coming up there more or less abreast would not be an ordinary procedure would it? [266] A. Pardon?

Q. I say, coming in, three of these boats being abreast and towing a derelict into that port, with other shipping coming and going, that would not be ordinary procedure, would it? It would be extraordinary?

(Testimony of Donald William Shaw.)

A. That would be ordinary procedure as long as you have fish boats coming in the river. That is what the Coast Guard is there for.

Q. As I say, you don't have three of them coming in there abreast at 11:00 o'clock at night?

A. Not necessarily.

Q. I see. Is that a matter that frequently happens?

A. Not necessarily. Usually only a possibility.

Q. Yes, but here you had three pulling on the same boat? A. Yes, sir.

The Court: And you had the chances of a flood tide there, too?

A. Yes, sir.

Mr. Bowerman: Q. That is right after the flood, as I understand it?

A. We had the benefit of the flood tide, yes, sir.

Q. And at that same time you were over toward the Washington shore because there was another larger vessel coming into port; is that the way it was?

A. We were in the main ship's channel and slightly on the north [267] side of the main ship channel.

Q. Why were you over there?

A. To give clearance to the ship.

Q. That is what I understood.

A. She was coming on the ranges and we were off the ranges a little bit but still in the main channel.

Q. So that Mr. Wuori's entanglement of line in

(Testimony of Donald William Shaw.)

his propeller, was just another one of the hazards of bringing this boat in? It is not usual but it happened? A. It happens, yes, sir.

Q. Just like the Melody was out in the ocean and tipped over on her side. That does not happen every day there, does it?

A. No, sir, it does not happen.

Q. But it happened to them?

A. Yes, sir.

Q. One of the hazards of the sea?

A. Yes, sir.

Q. Sometimes it happens and sometimes it doesn't. I didn't get your name. A. Shaw.

Q. Shaw? A. Shaw; S-h-a-w.

Q. And what is your first name?

A. Donald.

The Court: Donald is a little Scotch. Put the two names [268] together. That is all.

Mr. Bowerman: Q. You were coming back from Tillamook Rock? A. Yes, sir.

Q. And you got word from the Coast Guard about this accident to the Melody?

A. Yes, sir. The message we received stated to proceed to the position and assist the lifeboats with the tow. At that time I don't think it was clearly understood just exactly what had taken place.

Q. And you arrived out there about 5:50, as I understand you? A. Yes, sir.

Q. And you found the Triumph—and you found the Wuori boat there with a line attached to the Melody?

(Testimony of Donald William Shaw.)

A. Not at the time we arrived, no, sir. At the time we arrived the Stampede was engaged in putting a towline back aboard the Melody. They just completed the operation after we arrived.

Q. But that is after their line had become detached and they put it back again?

A. Yes, sir.

Q. As you understood it? A. Yes, sir.

Q. And the Coast Guard boat had two men on the Melody at the time? A. Yes, sir.

Q. They had fastened their line and refastened the Wuori line? [269] A. Yes, sir.

Q. Now as I view it, you got your own line attached at about 6:30?

A. Approximately that time, yes.

Q. The Coast Guard requires you gentlemen to keep a record of what you do so that you have what you call a log of it?

A. I maintain the ship's log. It is what we term a rough log, and it is mainly used as a reference concerning the movements of the boat, but it is in no way an official log; that is, copies are not submitted to our headquarters, or anything in that manner.

Q. It is for personal record?

A. It is for a record of the boat.

Q. Is it something that you leave with the boat? If you would be transferred would you leave it there or take it with you?

A. I would leave it on the boat. Possibly the

(Testimony of Donald William Shaw.)

next man would maintain it in a little different fashion. That would be up to him.

Q. Do you think there is any record of this radio conversation, that that was filed? Did you put that in your log? A. No, sir, I didn't.

Q. And have you got anything in your log showing the time when Mr. Wuori said that he wanted to shorten up his cables, whatever you call that?

A. There is no entry in the log to that effect, but we would [270] have an entry of the fouling of the cable, and then all the other events that took place. But just the fact that at such a time the Stampede II's towline fouled a beam, that is all that we entered.

Q. You have the time?

A. We have the time, yes.

Q. When the towline fouled a beam?

A. Yes, sir.

Q. And what was that?

A. I have a copy of it right here, sir, and I look at it as being 22:45.

Q. What does that mean?

A. That would be 10:45 p.m.

Q. 10:45. When do you make these entries, Mr. Shaw, with reference to the occurrence?

A. Well, in a case like that——

Q. I mean, when did you make this entry, if you remember? A. If I remember?

Q. Yes.

A. I believe I made that entry when we were safely in the river, or possibly I made it when we

(Testimony of Donald William Shaw.)

come up to the beach. I made a notation of it on a tablet or a small book there, but then the entry into the log was possibly made when we returned to the dock.

Q. Where are you stationed, on the river or down at Tillamook? [271]

A. On the river, at Point Adams.

Q. And you service the station—you boat services the station down at Tillamook Rock?

A. Yes, sir, at Tillamook Rock. We transport personnel and supplies to and from Tillamook life station.

Q. Now as I understand you, the Stampede, according to your belief, fouled its towline on the bottom of the river?

A. That is what I believe happened, yes, sir.

Q. And then in some way got your towline fouled in its propeller?

A. Our towline was fouled in their propeller, yes, sir.

Q. And that occasioned the cutting of both of these lines? A. Both his line——

Q. And your line?

A. No, sir. I believe that Mr. Wuori slipped his entire cable in the hopes that it would stay attached to the Melody and that when she was beached he could recover it.

Q. Oh.

A. And our line it was necessary to cut, too, from Mr. Wuori and get him into position where he could be helped on in.

(Testimony of Donald William Shaw.)

Q. Either you or the other Coast Guardsmen I think testified that the next day there was no line on this winch?

A. That is what I have been told. However, I didn't examine the Melody. I went back out to sea.

Q. No. I mean, you assume that all of his line was cut loose [272] from Wuori's boat?

A. I assumed that it was, from what I have heard.

Q. Yes. And when the Melody was beached I believe they didn't find the entire line there?

A. I believe that, yes, sir.

Q. Yes. But in any event, it is your idea that his towline was fouled on the bottom first?

A. Yes, sir.

Q. And later your towline was fouled in his propeller? A. Yes, sir.

Q. And that necessitated or resulted in his towline being detached from Wuori's boat and your towline being cut off so you could get loose from the propeller, and later it was again fastened onto the Melody? A. Yes, sir.

Q. And you proceeded with the tow?

A. Yes, sir.

Mr. Bowerman: That is the way you understand it. I believe that is all.

Mr. Wood: If your Honor please, could I have permission to ask a few questions, not many?

The Court: Yes.

(Testimony of Donald William Shaw.)

Redirect Examination

By Mr. Wood:

Q. I don't want to embarrass you or Mr. Wuori, but I do want [273] the actual facts, whoever they hurt or help. Now, first, I am going to tell you this: That yesterday Mr. Wuori testified that the reason your line got fouled in his propeller was that you crossed his bow from starboard to port and that in his opinion that was bad maneuvering on your part.

Mr. Bowerman: Now I submit, your Honor, that is unfair, and it is not in the record. There was nothing of that kind said.

Mr. Wood: I will leave it to the Court.

Mr. Bowerman: Counsel has no right to try to prejudice it.

Mr. Wood: Doesn't your Honor remember the testimony?

The Court: Somebody asked a question like that. Whether it was answered or not I don't know. There is no dispute, I take it, that yesetrday it was testified that the Triumph was across his bow.

Mr. Bowerman: No, I am not questioning that, but I do question——

Mr. Wood: I won't take time to go back to the record——

Mr. Bowerman: I know, but when you come in here and make a statement like that in this court you ought to apologize to everybody around here.

Mr. Wood: I don't think so. I claim it is on the record.

(Testimony of Donald William Shaw.)

The Court: All right, but on the basis——

Mr. Wood: Leave it out.

The Witness: I would say—— [274]

The Court: You wait. You haven't been asked a question.

The Witness: All right, sir.

Mr. Wood: Q. Is it a fact that you crossed his bow from port to starboard? A. No, sir.

The Court: Starboard to port?

A. Starboard to port; that is correct.

Mr. Wood: Q. Starboard to port. Was that the fact? A. Yes, sir.

Q. Now is it your honest judgment—that is what we have got to have—that a skillful tow master would have permitted his line to get fouled on the bottom?

A. I don't believe there is a skillful tow master in the world that has not made a mistake.

Q. No; I think that is right, but that is hardly an answer to my question. I want to know if Captain Wuori had navigated his boat with ordinary skillful seamanship at that time, would his line have fouled the bottom, in your opinion?

A. I think that Mr. Wuori was navigating his boat and I will say that he was attempting to navigate it to the best of his ability.

Q. Yes, I have no doubt he was, but that is not an answer to my question.

The Court: What were you going to say a minute ago when you turned to me? [275]

A. Well, this matter of who is a good boatman

(Testimony of Donald William Shaw.)

and who is not a good boatman, the only thing I can offer in my defense is that Lieutenant McCormack—I was in charge of the boat; I was in charge of it, and he is Lieutenant in the Coast Guard and has been in the Coast Guard for twenty-four years, and in later discussions of the handling of the towing of the Melody there was never at any time any revocation made of the way I handled the Triumph.

Q. No, I don't think there was.

A. And he was aboard the Triumph and observed practically every turn of the wheel.

Q. Well, would ordinary skillful maneuvering on the part of the Stampede II have permitted your line to foul his propeller?

A. I think another factor is to be put in there. Wuori's claim is that he had shortened his line, and that they all did it at that time.

Q. Is that a fact? Were you all shortening your lines at that time?

A. Myself, I would consider it unsafe for two boats to shorten their lines at the same time.

Q. Is that what you were doing?

A. We were not shortening any hawser, no, sir. We were attempting to stay clear of the Stampede wheel but shortened his hawser and we may have later shortened our hawser but I was not attempting to shorten my hawser while he was shortening [276] his.

Q. Considering the operation you were giving, by veering off to the starboard, as you testified, was

(Testimony of Donald William Shaw.)

it ordinary, skillful maneuvering, for him to back over the line?

The Court: Well, he doesn't have the other factor in there yet.

Mr. Wood: Well, what is it, your Honor?

The Court: Well, do you concur, or do you deny, or what is your position about, Wuori's statement that it was proposed to the flotilla that they all shorten their lines on account of the approach to the nearness of the mine fields?

A. Well, if that was suggested by Mr. Wuori I would have refused to do so, because that is not a position that we ordinarily shorten line to take a tow through the mine field.

The Court: Well, you don't remember that suggestion, if it were made? You didn't hear it?

A. I think, as I recall, Mr. Wuori was going to take in his line, but the reason he was going to take it in was to attempt to free his line from the bottom.

Mr. Wood: May I ask a question?

The Court: Oh, certainly, Mr. Wood.

Mr. Wood: Q. We still haven't got an answer to this question. If you say you can't answer it it is O.K. with me, but I want to know it if you can answer it. In your opinion as a seaman, was it skillful maneuvering on Wuori's part to foul [277] his propeller in your line?

Mr. Bowerman: That, if your Honor please, does not take into account—that is, allow the witness to take into account conditions as they existed there at the time.

(Testimony of Donald William Shaw.)

Mr. Wood: He was there at the time himself.

The Court: Well, Gentlemen, I understand where your ideas don't mesh. You start from different points. He says whatever happened resulted from his proposal that they all shorten their lines and that he was starting to do that himself. This man says he heard no such proposition and he would have rejected it if it had been made. So I understand that they start from different points. Mr. Wood is examining the witness based on his theory, which is there was no such proposal made by Wuori.

Mr. Bowerman: That is not the question. The question is whether it was skillful maneuvering and he had tangled up in his line.

Mr. Wood: That is what I want to show.

The Court: He is asking that on the basis Wuori was hauling away there and he wasn't shortening the line.

Mr. Wood: Q. Would you say, sir, the ordinary master operating his boat with the ordinary skill would have fouled his propeller in your line?

A. I would say that under the circumstances, his line being fouled on the bottom, that even though he may have used all [278] the seamanship that was possible for him to use, he still may have fouled my line, and I possibly having the right to my opinion could say that it was poor seamanship and he could say that it was not. So it is a matter of personal opinion, and my opinion is that it was a pure accident.

Q. Yes. And you don't know what caused his line to foul the bottom?

(Testimony of Donald William Shaw.)

A. I don't know what caused his line to foul the bottom.

Q. Now I want to ask you about a different subject. Was the Triumph line of sufficient power to tow the Melody in?

A. Yes, sir, I believe it was.

Q. And was the other Coast Guard boat also of sufficient power to tow her in?

A. I believe that the motor lifeboat could have brought her in by herself, with the aid of the tide.

Q. So that either the Triumph or the other boat could have brought the Melody in?

A. I know the Triumph could, and if I had been alone in the motor lifeboat I would have tried it.

Q. Now I want to ask you whether, after the two Coast Guard boats got ahold of the Melody, whether the Stampede II was in assistance of the towing or whether you really could have got along better without it?

A. I can only say this: That Chief Jensen, in charge of the other boat, and myself, have had considerable experience towing [279] together, you might say, as a team. Due to that reason we possibly could have worked just as well without the aid of the Stampede. We had the power and we had the boats.

The Court: You had authority to make Wuori, as a civilion, let go, didn't you?

A. That is a little questionable. I believe that we do have.

The Court: It is a question, I know.

(Testimony of Donald William Shaw.)

A. If we at any time felt that he was, by his actions, further endangering the boat, we could order him to release his line and take over active control of the situation.

Mr. Wood: Q. Well, if he had rolled up his wire and pulled out of the way, wouldn't you have been better off?

A. I can only say this: That as long as we fouled the bottom it would appear that we would have been.

Q. Only one more question. Which boat was it that——

The Court: Don't answer. Too many ifs. What about the two hours before you got there?

A. Pardon?

The Court: What about the two hours before you got there, when he had hold of her alone?

A. Well, he had hold of her alone but there was very little progress made.

The Court: Might she not have sunk?

A. You say she may have sunk?

The Court: I didn't say that. I say, might she not have [280] sunk?

A. Well, she was afloat and it is my opinion that she would have stayed afloat for some time.

The Court: For the two hours?

A. Yes, sir.

Mr. Wood: Q. Now which boat was it that towed the Stampede II in?

A. That was the Cape Disappointment motor lifeboat.

Mr. Wood: That is all.

(Testimony of Donald William Shaw.)

Recross Examination

By Mr. Bowerman:

Q. You saw the boat, of course, only in the condition in which it was when you got up there?

A. Yes, sir.

Q. And during that time, according to your information of Wuori's boat, it had a line on it and was making as much progress as it could?

A. They had just completed putting a line on and he was just starting to put power on the boat.

Q. Yes. But it is your understanding, is it not, that for a considerable part of that two hours he had been towing the Melody?

A. It was my understanding that there had been attempts made to tow the Melody, yes, sir.

Q. Not only attempts but they had actually towed it, hadn't [281] they, when they broke their connection?

A. Yes, sir. I believe he had made some progress at that.

Q. Yes. It wasn't any swift trip even after all three of you got hold of her?

A. No, it wasn't.

Q. Your progress was about how much an hour, do you think?

A. Well, we started to tow at approximately 6:30 and we must have beached the boat at, I would say, a half an hour after midnight, so it would appear from that that slightly over two miles per hour, or two and a half——

Q. With practically all three of you?

(Testimony of Donald William Shaw.)

A. Yes, sir.

Q. And a flood tide coming in? A. Yes.

Q. In other words, under all of the circumstances the speed of the boat was about two miles an hour?

A. I would say two and a half, whatever it is.

Q. Two and a half, whatever it is. Now Wuori was there in charge when the Coast Guard boats got there?

A. He was there when we arrived, yes, sir.

Q. It is your understanding he was there when the other two arrived? A. Yes, sir.

Q. They were there when you were there, weren't they? A. Yes, sir. [282]

Q. It is your understanding he was there when all of them were there? A. Yes, sir.

Q. Now none of them suggested to him that he should quit and let loose?

A. No, sir. There was no reason suggested to.

Q. There was no reason for that, that you know of? A. That was up to Mr. Wuori.

Q. Yes. And he was there, and he did nothing, in your judgment, which would have warranted you in taking the boat away from him?

A. No, sir.

Mr. Bowerman: That is all.

Mr. Wood: That is all, Mr. Shaw.

The Court: The crash boat?

A. The crash boat, sir. It may have been possible. She had lots of power, more than any of us, so far as horsepower.

The Court: Anything else enter into it?

(Testimony of Donald William Shaw.)

A. Well, you mean a boat that is built for speed mainly to answer plane crashes? She is not as heavily built and is built for towing as much as the lifeboats.

Mr. Wood: For your Honor's information I think I ought to tell you we expect to have the master of the crash boat here tomorrow.

Mr. Bowerman: Q. Do you know the depth of water out there [283] where the Melody was when you arrived? Did you take the soundings?

A. I didn't take soundings, no, sir.

Mr. Bowerman: That is all.

(Witness excused.)

Mr. Wood: If your Honor please, except for the skipper of the crash boat, who will be here in the morning, we have no more witnesses.

The Court: What do you want to do on your side yet tonight?

Mr. Bowerman: I beg pardon?

The Court: He has closed, except for the skipper of the crash boat, who will be here in the morning. What can you do on your side yet tonight?

Mr. Bowerman: Do you gentlemen have the time when this boat was put up here in this boat yard?

Mr. Wood: No, we haven't it, unless Mr. Rustad has it. I will be glad for him to state it, if he knows.

Mr. Rustad: No, I haven't it.

The Court: No, we haven't that time.

Mr. Bowerman: If your Honor please, I don't doubt we can make headway during the night. We are about to have a very little rebuttal.

(Testimony of Donald William Shaw.)

The Court: I have another case for ten in the morning. I had better set it up to two, I guess. I think we ought to [284] be able to get through in the morning?

Mr. Wood: Oh, yes.

The Court: What do you think? You will get through in the morning?

Mr. Bowerman: Oh, I think so.

The Court: Well, of course, you will want to argue the case?

Mr. Wood: Yes.

The Court: You are both good talkers. In times past you would both like to talk.

Mr. Bowerman: You say the time has passed when we——

The Court: Oh, no; I didn't say the time was passed.

Mr. Bowerman: I was going to agree with you.

The Court: I say in times past you have talked, and I have enjoyed hearing you. It will be nice for you to get through in the morning, because I am going to ask Mr. Bischoff and another gentleman to come at two o'clock tomorrow. All right; ten in the morning.

Mr. Bowerman: Can we have it understood we can inquire from Kern & Kibbe about those dates?

Mr. Wood: Yes.

(Thereupon, at 4:20 o'clock p.m., court was adjourned until tomorrow morning at 10:00 o'clock.)

Wednesday, October 31, 1945

Court convened at 10:00 o'clock a.m., and, after disposing of other matters, resumed proceedings herein at 10:28 o'clock a.m., as follows:

Mr. Wood: If your Honor please, I wish to state personally a little matter personal to myself before we call a witness. Yesterday, when I stated that Mr. Wuori had testified that the fouling of the Triumph's line with the Stampede's propeller was due to neglectful maneuvering on the part of his client Mr. Bowerman said I was misquoting the record and behaving in an improper manner. Now I think I am as sensitive about my behavior and my manner as any man here. Mr. Wuori having so testified, it was necessary to have that statement contradicted and I asked Mr. Shaw, the Coast Guardsman, the question in order that he could contradict it, which he did. I was accused of misquoting the record. I, therefore, had the record transcribed. I am going to pass on copy to your Honor, through the Clerk, and I am going to read the other.

This was my cross examination of Mr. Wuori:

"Q. Now do you claim that the reason the line fouled was because the Triumph crossed your bow?

"A. Yes.

"Q. And you claim that was bad maneuvering on the part of the Triumph?

"A. Well, yes, I do." [286]

Now it was said yesterday that I owed everybody in the courtroom an apology, and when I have to apologize I think I know when to do it. I think if

(Testimony of Thomas Rustad.)

any apologies are due this morning they are not from me.

Mr. Bowerman: Well, if your Honor please, it is obvious I am the one that owes an apology. I didn't hear it. I didn't hear that, and I did speak with some feeling and I apologize to counsel and the Court.

Mr. Wood: I accept it.

Mr. Bowerman: And all others present.

The Court: We are starting with a clean slate, then. Call a witness, somebody.

Mr. Wood: Mr. Gaither is here and I am going to recall Mr. Rustad for one question before Mr. Gaither. Mr. Rustad, there are two questions I want to ask you.

THOMAS RUSTAD

was thereupon recalled as a witness in behalf of the Respondents and further testified as follows:

Direct Examination

By Mr. Wood:

Q. Mr. Rustad, when you came back to the Melody in the crash boat and Mr. Wuori and his Stampede were there, what, if anything, was said to you by Mr. Wuori about insurance at that time? I am not talking about the time on the beach later.

A. When I first came up there I think one of the first things that Mr. Wuori said, that I didn't

(Testimony of Thomas Rustad.)

recall yesterday, was that [287] he asked, I imagine me in particular, that if I had insurance.

Q. And did you make any reply?

A. I don't recall that I did.

Q. Now there is another question I want to ask. When you were drifting there in the rubber life raft, I think you estimated yesterday a mile and a half away from the Melody, didn't you?

A. Yes, sir.

Q. Could you see the Stampede II at all times?

A. Yes, sir.

Q. Did you see her make any of these two circles that she claimed to have made around the Melody?

A. No, sir.

Q. If she had made two circles around the Melody a half a mile distance from the Melody, which is what Mr. Wuori testified—he said the circle was a mile in diameter—if any such circles were made and really a search made, was the state of the weather and the waves or the sea such as they should have seen you and your life raft?

Mr. Bowerman: That is objected to as calling for a conclusion and taking over the province of the Judge.

The Court: He may answer, subject to the objection.

A. Yes, I would think that they would, if they were searching for anything.

Mr. Wood: That is all. [288]

(Testimony of Thomas Rustad.)

Cross Examination

Mr. Bowerman:

Q. Mr. Rustad, you had a two-way radio on your boat? A. Yes, sir.

Q. And you didn't use that?

A. We were unable to, sir.

Q. I asked you whether you used it?

A. No, sir.

Q. Did you make any effort to use it?

A. How could we, sir?

Q. I asked you whether you made any effort to use it. A. No, sir.

Q. You were there. I wasn't there.

A. No; and if you were there you would know.

Q. Well, did you go to the back end of the boat after you got off of it? A. I did not, sir.

Q. Did you make any attempt to?

A. We took the crew off.

Q. I say, did you make an attempt to go back on your boat after you got off of it?

A. No, sir.

Q. The radio was in the pilothouse?

A. Yes, sir.

Q. What did Mr. Wuori say to you about insurance at this time [289] as you now remember it?

A. At the time we came up on the crash boat?

Q. Well, at the time you just now told about, whenever it was.

A. Well, that was the question I didn't recall yesterday, and he asked me, that is to say in particular if we had insurance.

(Testimony of Thomas Rustad.)

Q. And you told him that you did or you didn't tell him anything?

A. I said I didn't recall what I said.

Q. But you remembered what he had said?

A. Yes.

Q. But you didn't think of that yesterday?

A. Well, you can't think of everything.

Q. I am asking you. You didn't think of it yesterday? A. No, sir.

Q. And you do not now know what your reply was?

A. If I may say so, I don't think I said anything.

Q. Well, I ask you if you remember, because you twice testified you didn't remember what was said; is that right?

A. Yes, that is what I said.

Q. Yes. That is when you were in this crash boat with the Coast Guard officers and your own crew? A. Yes, sir.

The Court: What happened to the rubber life raft?

A. The Coast—that is, the crash boat picked it up and carried it with us into Point Adams to the place we were picked up. [290]

The Court: Was it trolling behind?

A. No. We pulled it aboard.

Mr. Bowerman: If your Honor please, I have one question that probably will be improper cross examination now, but I wanted to recall this witness for it anyway. It pertains to his original examination. I would rather ask him now than recall him.

(Testimony of Thomas Rustad.)

The Court: He may answer.

Mr. Bowerman: Q. Mr. Rustad, did you ever pay, or offer to pay, Mr. Wuori anything for his time, expense or trouble, or anything else, in connection with what he did to your boat, the Melody?

A. No, sir. That is out of my hands.

Q. Well, again I ask you whether you did or offered to pay anything? A. I said no, sir.

Q. And why do you say it is out of your hands?

A. It is covered by insurance, sir.

Q. I see. When you left the boat it was up to the insurance company? Is that your idea?

A. I would not say that, sir.

Q. Why do you say paying the expense, for instance, of the telephone messages that got relief out there? You haven't even offered to pay that, have you?

A. I never made any arrangements with him, in the first place. [291]

Mr. Bowerman: Yes. That is all.

Redirect Examination

By Mr. Wood:

Q. As a matter of fact, I thought it was in the libel here, but, as a matter of fact, Mr. Wuori placed his case in the hands of Mr. Fulton almost immediately after this, didn't he? A. Yes, sir.

Mr. Wood: That is all.

(Testimony of Thomas Rustad.)

Recross Examination

By Mr. Bowerman:

Q. You say that Mr. Wuori placed his case in Mr. Fulton's hands almost immediately after the wreck? A. The next day, sir.

Q. The next day?

A. As far as I could understand.

Q. Did Mr. Wuori tell you that?

A. No, sir.

Q. Did Mr. Fulton tell you that?

A. No, sir.

Q. Now how long was it after this boat was brought up to Astoria and the fish taken out of it before it was brought to Portland?

A. It was towed from Astoria on Friday afternoon following the accident. That would be the 27th, I believe, or 26th.

Q. You say it was towed to Astoria? [292]

A. Towed from Astoria to Portland.

Mr. Bowerman: Oh, to Portland. That is all.

Mr. Wood: That is all.

(Witness excused.)

Mr. Wood: Call Mr. Gaither, please.

The Clerk: State your name, please.

Mr. Gaither: William Gaither.

WILLIAM GAITHER

was thereupon produced as a witness in behalf of the Respondents and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Wood:

Q. Mr. Gaither, you are a member of the United States Coast Guard, are you not?

A. Yes, sir.

Q. You have to speak up loud so the Reporter can take it down in his notes. A. Yes, sir.

Q. And at present you are stationed at Point Adams? A. Yes, sir.

Q. And what has been your previous Coast Guard experience and instructions?

A. I have been in Coast Guard stations for eleven years.

Q. Whereabouts? [293]

A. I was a year at Point Adams. I was three years at Cape Disappointment; two years at Tillamook, and then I was stationed at temporary duty with the Navy at Astoria.

Q. And you were the man in command of the crash boat that went out to this rubber life raft, were you not? A. Yes, sir.

Q. Tell a little about the crash boat, the dimension, size and speed and power.

A. The crash boat is 63-foot, being built prim-

(Testimony of William Gaither.)

arily for saving lives of fliers or people in distress at sea. It is not equipped for any kind of salvage work except for planes.

The Court. What?

A. Except for planes.

The Court: Except for planes?

A. Yes, sir. It is fairly fast. It makes thirty-three knots. A square-turn boat, it has a place in the boat for taking care of injured or hurt personnel. It was built for the Navy, just for our sea risk work.

The Court: What you are saying is quite interesting to everybody and I would like for you to talk so everybody in the courtroom can hear you.

Mr. Wood: Yes. Talk louder, Mr. Gaither.

The Witness: Well, there is not much more to say.

Q. No, but in the future, in any of the rest of your testimony the Court wants you to speak up a little higher and a little [294] louder. I will stand over here and if you will talk so I can hear it way over here maybe we will all hear it. How many men in your crew on the crash boat?

A. Nine men, counting myself.

Q. What caused you to go out to the life raft? What word did you get?

A. There was a couple of Navy planes on patrol and they saw these men in the life raft. They called the station and reported and we responded to their call.

Q. Were you at the station when that patrol call came in?

(Testimony of William Gaither.)

A. I was on the boat tied up at the station.

Q. And in response to that call you started out?

A. Yes, sir.

Q. What time did you leave the station?

A. Just a couple of minutes before three o'clock.

Q. And what time did you get out to the rubber life raft?

A. It was just a few minutes before 3:30.

Q. And approximately where was the rubber life raft at that time, do you know?

A. It was between five and six miles northwest of North Head, in the approximate vicinity; five to six or seven, something like that.

Q. And at the time you reached the rubber life raft could you see the Stampede?

A. Yes, sir. [295]

Q. How far away do you think she was?

A. Possibly two miles. I would not say for sure. I didn't take any accurate measurement, but about two miles.

Q. No. Now what did you do when you reached the life raft?

A. We picked the men in the life raft up.

Q. And the raft itself, also? A. Yes, sir.

The Court: Will you pardon me?

Mr. Wood: Yes, sir.

The Court: With relation to the Stampede, was she tied close to the Melody at that time?

A. Well, we were not paying any particular attention. You could not be sure as to whether the

(Testimony of William Gaither.)

Melody was here or not, because she was very low in the water.

Mr. Wood: Q. This was about 3:30, you say, when you reached the raft?

A. Just about 3:30.

Q. Then what did you do after you picked the men on the life raft boat up?

A. Then we proceeded over to where the Stampede was.

Q. And how long did it take you to get over there?

A. Well, in the neighborhood of five minutes, or a little less. Not a great deal.

Q. The sea was fairly smooth, was it not?

A. That is right. [296]

Q. So you could make whatever speed you wanted to?

A. The sea had no control over the speed whatever. It was a very light—well, light to moderate ground swell.

Q. When you got to the Melody the Melody was there on her side, half submerged, wasn't she, or more than half submerged?

A. There was a little of the stern and just a little of the wheel that was sticking out of the water.

Q. Yes. And the Stampede was there beside her?

A. It was laying right close to her.

Q. Right close to her. Now what, if anything, had the Stampede done——

The Court: Why did he make for the Stampede?

(Testimony of William Gaither.)

Mr. Wood: Yes.

Q. Why did you go over there?

A. Well, we had the crew of the boat and they were interested in their boat, so we took them there so we could see if they could be of any assistance.

The Court: How did they know where the Stampede was?

A. The Coast Guard rescue planes had come out on the same mission we were and we asked them could they see the sunken hull of the Melody and they reported the boat was a fishing boat to the west of that, and the only boat in the vicinity at all was the Stampede.

Mr. Wood: Q. Now when you got over to the Melody and the Stampede did the Stampede have any line on the Melody at that [297] time?

A. They had a small line tied to the stern of the Melody.

Q. How small a line?

A. Well, it was about twenty-one or twenty-four thread, I would say from the looks. I could not say.

Q. Was it a line that would do for towing?

A. No, sir.

Q. It was too small for a towline, was it?

A. Too small for a towline.

Q. What was the attitude of Mr. Wuori at that time, so far as you could gather, about the claim, the boat? What was he going to do?

Mr. Bowerman: If the Court please, I object to that as calling for a conclusion. I submit the wit-

(Testimony of William Gaither.)

ness can tell what was said and what was done, but when you ask for a man's attitude——

Mr. Wood: I think, as I understand it, your Honor, it is like one of those cases where you can't describe all the little factors when you ask a man the cause of what happened at a certain time, but he can at least give his impression of it or give his opinion.

The Court: He can give it at the end. Give first what was said and done.

Mr. Wood: All right.

Q. What we want to finally arrive at Mr. Gaither is Mr. Wuori's [298] attitude about the whole business and we will lead up to that. I will ask you, first, what was said by Mr. Wuori, or you, or Mr. Rustad, that you remember?

A. Well, I didn't do very much of the talking to Mr. Wuori, because the place where you control the boat is inside the wings on the flying bridge and you can't hear very good with the engines running. I had a man up in the bow with a megaphone and when we come up Mr. Wuori wanted to know if we would put a line on the boat.

The Court: Put a line where?

A. A line on the boat.

The Court: On the Melody?

A. On the Melody, and probably with the idea of towing the boat, so I informed my men on the boat that we could not tow—they were not equipped for towing the boat and that at the time was all that was said at that particular time.

(Testimony of William Gaither.)

Q. That is all that was said at that particular time?

A. As far as I remember, yes, sir.

Q. Was anything said subsequent to that?

A. Well, after we were there Mr. Wuori had a man on the boat that pulled up right close to the Melody and we put Mr. Rustad's rubber life raft back in the water and Mr. Rustad and one of the men of my boat got in the rubber life raft. They went over to the Melody and I instructed them to fasten our anchor line on some secure place on the Melody in the event that it [299] should sink so we would have something substantial for salvage if she did sink.

Q. You mean to mark her place?

A. That is right; and something to lift with. But the bow of the boat was so far under that there was no chance to secure the line any place, and the Stampede had their line on the stern of the boat, so I told them since their line was on the boat that we could not interfere.

Q. You mean the lead line?

A. Well, after we didn't help them any as far as getting a line on, then they secured a larger line on it.

The Court: Who did you tell that you could not interfere?

A. We didn't tell anybody we could not interfere but it wasn't our business——

The Court: Well, wait. You just used that expression. I don't want to bother you in any way,

(Testimony of William Gaither.)

and I may have misheard you. You just said that you told them you could not interfere.

A. That was Mr. Rustad and the man in the rubber life raft.

The Court: That is what you told them?

A. When they said there was no place to secure a line on the bow, we could not interfere back there where they were.

Mr. Wood: Q. Now was anything said? We are still pursuing the subject of any conversation that was passed between anybody. What else, if anything, was said?

A. Well, Mr. Wuori was talking to the men in the life raft and [300] I could hear parts of it but I would not be able to say for sure, but there was a question of insurance came up.

Q. You heard that?

A. I heard the question of insurance. What was said about it I don't know.

Q. Did you hear Mr. Wuori ask about it?

A. Mr. Wuori asked if there was insurance. That is when Mr. Rustad and my men were in the rubber life raft.

Q. How long did you stay around there?

A. We were there from about twenty minutes to four until about quarter to five.

Q. Nearly an hour, then?

A. A little over an hour.

Q. Yes, that is right. And you stayed there until you saw the Triumph and the other boat approaching, didn't you?

(Testimony of William Gaither.)

A. Not the Triumph. We saw there was two small motor lifeboats from the Coast Guard stations coming out of the river. The Triumph was on another call at the time. I don't know what time she arrived there.

Q. I see. Now have you told everything that was said that you recall at that time that you were lying alongside there? A. As far as I recall, yes.

Q. And from what actions on the part of Mr. Wuori, like this little line of order and his talk—what did you gather as to his attitude? [301]

Mr. Fulton: About what?

Mr. Wood: If this were a jury trial there might be some objection to that question, but I don't think there is in an Admiralty Court.

The Court: Go ahead and answer, if you can.

A. Well, when we first came up to the boat Mr. Wuori wanted to put a line on there and he was informed that we could not help him tow. There was conversation passed back and forth and I could not understand the questions, or what he was saying, but the crew of my boat were very mad about it. Whatever he said made them mad. I could not say what it was; I won't try to repeat it, but just from what he stated to my men they were not interested one way or the other. I don't know what was going on or why it was being done but they didn't like the way he was acting.

Q. You didn't wait until the other boats came out and put their lines aboard to help tow, did you?

(Testimony of William Gaither.)

A. No, sir. We left as soon as they were in sight so we could see if they were coming.

Q. Then I take it that you don't know how far the Stampede towed the Melody in without assistance?

A. Well, for the time that we were there so towing the Melody, a little less than two miles, I would say.

Q. Oh. That is while you were still out there?

A. That is while we were there, in that vicinity, yes, sir. [302]

Q. And then you proceeded with the rescue men and the rubber raft into Astoria?

A. At Point Adams.

Q. Point Adams. Did you meet the Triumph coming out at all?

A. The Triumph was already out on another call in the river.

Q. Oh, on another call in the river. There was some talk yesterday about mine fields there in the inner part of the river. I don't want any false impression given about that. If you hit one of those mines would it explode? A. No, sir.

Q. Where are those mines in relation to being up where really boats would hit them or not?

A. The mines themselves were on the bottom.

Q. And how were they exploded?

A. From shore control.

Q. From shore control? A. Yes.

Mr. Wood: Your Honor, that is all I think of to ask this witness. I remember your Honor said

(Testimony of William Gaither.)

yesterday that you thought he should be brought up here. If anything occurs to your Honor to ask him I will be glad to have you do it.

The Court: No, I didn't say that, Mr. Wood.

Mr. Wood: Didn't you?

The Court: No.

Mr. Wood: Excuse me. [303]

The Court: I didn't say that.

Mr. Wood: My mistake, then.

The Court: Cross-examine.

Cross Examination

By Mr. Bowerman:

Q. Mr. Gaither, I don't think I got the exact time when you arrived and how long you were there. Will you please give it to me, sir.

A. I made a note of that from my log before I started up here. The exact time of the call of the men in the life raft, as reported by the plane, was 14:56.

Q. Is that according to the regular time?

A. That is four minutes to three.

Q. That is 3:56?

Mr. Fulton: 2:56.

Mr. Bowerman: 2:56.

A. We departed——

Q. Now what happened then? I didn't get that.

A. That was when a plane reported to the station that a life raft was drifting with men on it.

Q. Just a minute, please.

The Court: Were those men in bad shape at all that you picked up?

(Testimony of William Gaither.)

A. One or two of the men had been in the water and they were practically—— [304]

The Court: Shocked?

A. I would say there was a semi-condition.

Mr. Bowerman: Q. All right. What is the next?

A. We departed a minute later, 14:57. That is 2:57.

Q. O.K.

A. We arrived at the scene where the life raft was at 3:27.

Q. All right.

A. Then it took us about eight minutes—I didn't put any definite time down in the log but it took us about eight minutes to pick the men and the life raft up and get straightened around; then we proceeded to where the Stampede was and we arrived at the Stampede at 3:40.

Q. 3:40? A. 3:40.

Q. Yes, sir.

A. And then we stayed by the Stampede until 4:45.

Q. And then you left and you were not back there again? A. No, we never came back again.

Q. Now I didn't get a complete note on the time and the distance that you thought the Melody was towed by Mr. Wuori.

A. Well, I have no idea. I didn't pay any particular attention. He towed on the boat approximately forty-five minutes or a little less than an hour while I was there, while I could see, and the dis-

(Testimony of William Gaither.)

tance could have possibly been two miles. It wasn't any more. [305]

Q. Now, as I understand it, when you got there the Melody was under water, except part of the stern and a part of the top works there. What is it you call it? A. The wheelhouse.

Q. The wheelhouse. And the situation was such that you recommended or discussed the question of putting an anchor out so you would have something to pull it up with?

A. We wanted a heavy enough line so you would have something to work with.

Q. Yes. The station indicated to you that it might sink? A. It looked very probable.

Q. Very probable that it would sink; that is right? A. Yes, sir.

Q. Mr. Wuori asked you about assisting in the towing and you stated that you were not equipped for towing? A. Yes, sir.

Q. That is the fact. Did you know at that time, you or your crew know at that time that Mr. Wuori had radioed either to Astoria or directly to one of your stations, asking for help, and that was the reason that the other boats came out there?

A. We were on our way up to the life raft when we heard Mr. Wuori talking on the radio.

Q. You knew that he had asked for help?

A. That is right.

Q. And did you know that the help that came, outside of yourself, [306] was as a result of his request?

(Testimony of William Gaither.)

A. Well, we called the station immediately when we got there and requested that they send the boats out, and the boats had all been notified.

Q. Huh?

A. The boats had all been notified.

Q. Did you know it was as a result of the message from Mr. Wuori?

A. Well, I presume it was. I wouldn't say. I wasn't there.

Mr. Bowerman: That is all.

Redirect Examination

By Mr. Wood:

Q. Mr. Gaither, the situation being that you and your crash boat were lying alongside or standing by the Melody and Coast Guard boats already on their way out to tow her in, do you know why it was—if you do, or if anything was said, indicate it—why Mr. Wuori didn't take his line off and go on about his fishing?

A. I don't know why he didn't. I didn't talk to him.

Mr. Wood: All right. That is all.

Recross Examination

By Mr. Bowerman:

Q. The boat under tow is not as apt to sink as it would be standing still, is it?

A. How is that? [307]

Q. I say, this boat under tow and moving would not be as apt to sink as it would standing still, would it?

(Testimony of William Gaither.)

A. Well, I believe there is just as much chance, maybe more chance.

Q. More chance. Have you ever had any experience with anything of that kind?

A. With two boats that were sunk?

Q. Yes. A. Yes, sir.

Q. And towing them while in sinking condition?

A. If the boat is going to sink it will sink regardless, but I didn't know what condition the Melody was in, just gradually filling up with water as air was being released from the air compartments. I didn't know what air was in there or anything.

Q. Did they tell you there were fish in there, several tons of fish? A. Yes, sir.

Q. Anyway, Mr. Wuori did notify the Coast Guard he did tow the boat in?

A. He assisted part way.

Q. Yes. Well, you were in sight while they towed it practically two miles; is that right?

A. I wasn't there while it was being done.

Q. No. I say while you were there he towed it, without being bound to exact figures, you estimated two miles? [308] A. Yes.

Q. And you left while he was still towing?

A. Yes, sir.

Mr. Bowerman: That is all.

Mr. Wood: That is all. Thank you, Mr. Gaither.

(Witness excused.)

Mr. Wood: Respondents rest, your Honor.

Mr. Bowerman: That is all.

The Court: Argument.

Mr. Bowerman: We are willing, I think, to submit it without argument, or with argument, whichever counsel and the Court think will be most helpful.

Mr. Wood: I should think we would like to make a short argument.

The Court: I will hear you, Mr. Wood. Mr. Wood expects to talk, so do you want to talk first?

Mr. Bowerman: We will waive our opening argument.

(Thereupon argument was made to the Court by Mr. Wood, in behalf of the Respondents, and Mr. Bowerman and Mr. Fulton in behalf of the Libelants. The Court thereupon allowed the Libelants two weeks to file a brief, the Respondents one week thereafter, and the Libelants one week for reply brief, and court was adjourned at 11:33 o'clock a.m.)

REPORTER'S CERTIFICATE

I, Alva W. Person, official reporter, hereby certify that I reported the proceedings had before the Honorable Claude McColloch, Judge, in the above-entitled cause, beginning Monday, October 29, 1945, and ending Wednesday, October 31, 1945; that I thereafter prepared a transcript from my shorthand notes, and the foregoing transcript, pages numbered 1 to 309, both inclusive, contains a full, true and impartial record of all the evidence given, all objections and motions made, all rulings thereon and all exceptions taken upon the trial of said cause.

In Witness Whereof I have hereunto set my hand this 30th day of April, 1946.

/s/ ALVA W. PERSON,
Official Court Reporter.

[Endorsed]: Filed May 25, 1946.

[Endorsed]: No. 11341. United States Circuit Court of Appeals for the Ninth Circuit. Tom Rustad, Owner and Claimant of the Oil Screw "Melody" and Fidelity & Deposit Company of Maryland, a corporation, Appellants, vs. Charles Wuori, John Kurtti, Cyrus C. Christensen and Armand Syvanen, Appellees. Apostles on Appeal. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed May 31, 1946.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 11341—Civil

Oil Screw MELODY and TOM RUSTAD, Owner and Claimant, FIDELITY & DEPOSIT COMPANY OF MARYLAND, a corporation, Stipulator,

Appellants,

vs.

CHARLES WUORI, JOHN KURTTI, CYRUS C. CHRISTENSEN and ARMAND SYVANEN,

Appellees.

STATEMENT OF POINTS

The points on which appellants, Tom Rustad and Fidelity & Deposit Company of Maryland, a corporation, stipulator, intend to rely on their appeal herein are the same as those stated in their Assignments of Error, which are incorporated herein by reference.

/s/ LOFTON L. TATUM,
of Proctors for Appellants.

(Acknowledgment of Service.)

[Endorsed]: Filed June 5, 1946. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER THAT ORIGINAL EXHIBITS NEED NOT BE PRINTED AS PART OF APOSTLES

Good cause therefor appearing, It Is Ordered that Libelant's Exhibits 1 and 2, being charts, need not be reproduced as a part of the printed Apostles on Appeal in above cause, but will be considered by the Court in their original form.

/s/ FRANCIS A. GARRECHT,
Senior United States Circuit Judge.

Dated: San Francisco, Calif., June 5, 1946.

[Endorsed]: Filed June 6, 1946. Paul P. O'Brien, Clerk.